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nied on August 7, 1947 (R. 13). The petition for a writ of certiorari was filed on November 6, 1947, and was granted December 8, 1947 (R. 13). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Under Section 602 (h) (2) of the National Service Life Insurance Act of 1940, a beneficiary 30 or more years of age is entitled to be paid in equal monthly installments for 120 months certain, with such payments continuing during the remaining lifetime of the beneficiary. The sole question presented relates to the method for computing the amount of such installments. In particular, the issue is whether the court below erred in invalidating Regulation 3450 issued by the Veterans' Administration, under which the amount of the installment is computed, in accordance with established actuarial principles, by taking into consideration the beneficiary's age and life expectancy at the time of the death of the insured. The court below, accepting respondent's contention, ruled that the statute requires that the amount be computed by dividing the face amount of the policy plus interest by 120, and that the resulting quotient (which is identical in amount in every such case, regardless of the age or life expectancy of the beneficiary) be paid

not only for the 120 months certain but also for the remaining lifetime of the beneficiary.

STATUTES AND REGULATION INVOLVED

The provisions of the National Service Life Insurance Act of 1940 (Part I, Title VI of the Second Revenue Act of 1940, Act of October 8, 1940, c. 757, 54 Stat. 974, 1008, 38 U. S. C. 801 *et seq.*) and the pertinent provisions of the 1944 and 1946 amendments thereto (Act of September 30, 1944, c. 454, 58 Stat. 762; Act of August 1, 1946, c. 728, 60 Stat. 781) are set forth in Appendix B, *infra,* pp. 70–88. Regulation 3450 of the Veterans' Administration, 6 Fed. Reg. 1162, 1166, 38 C. F. R. (Supp. 1941) 10.3450, is set forth in Appendix C, *infra,* pp. 89–90.

STATEMENT

On May 7, 1941, Adolph B. Schwartz, while on active military service, applied for and was granted a $5,000 policy of National Service Life Insurance in which respondent was designated as beneficiary and her relationship to the insured was stated to be that of an "aunt," whereas in fact she was not the insured's aunt. Upon his death in May 1943, the Veterans' Administration refused to pay respondent the benefits of the insurance policy on the ground that she was neither his aunt nor had stood *in loco parentis* to the insured, and hence was not an eligible beneficiary under Section 602 (g) of the National

Service Life Insurance Act of 1940, as it then stood (54 Stat. 1008, 1010, 38 U. S. C. 802 (g)).[1] Respondent accordingly brought suit on August 9, 1944, in the District Court of the United States for the Northern District of Illinois, Eastern Division, in accordance with Section 617 of the National Service Life Insurance Act of 1940 (38 U. S. C. 817, *infra,* p. 83), to recover the insurance benefits as the designated beneficiary of the insured. A trial was had without a jury and the District Court then held that as a matter of law the *in loco parentis* relationship could not have existed and entered judgment against respondent (R. 1–2). On appeal, the Circuit Court of Appeals for the Seventh Circuit held as a matter of law that the relationship could and did exist. Accordingly, it reversed the District Court's judgment and remanded the cause for further proceedings. *Zazove* v. *United States,* 156 F. (2d) 24.

On the remand, the Veterans' Administration offered to pay respondent in accordance with its Regulation 3450 (*infra,* pp. 89–90). That Regulation contained a schedule of monthly installments to be paid under Section 602 (h) (2), *infra,* p. 73, which provided that insurance the beneficiary of which was 30 or more years of age should be paid

[1] Section 4 of the 1946 amendment (60 Stat. 781, 782) revoked the restrictions in the permitted class of beneficiaries in regard to National Service Life Insurance policies maturing thereafter.

"in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary."[2] These payments were calculated in that Regulation on the basis of the beneficiary's life expectancy, as determined from the American Experience Table of Mortality,[3] (which the Veterans' Administration is required to use by

[2] Under this method of payment, the United States is obligated to pay at least 120 equal monthly installments. If the beneficiary lives beyond ten years (the period of guaranteed payments), he is entitled to receive the same monthly installments for his remaining lifetime. If he fails to live ten years, the unpaid guaranteed installments are paid to the next in line, usually the contingent beneficiary.

[3] This table was constructed in the year 1868 from the experience of the Mutual Life Insurance Company of New York during a period of about 20 years. It has four columns, showing for each age on the basis of 100,000 (1) number living, (2) number dying, (3) number dying per 1,000 (Rate of Mortality), and (4) expectation of life. Column (3) is the basic column and is used in making actuarial computations. Column (4) is, as are the other two columns, derived from column (3) and is, generally, merely another way of expressing the same concept. Although not used in modern life insurance computations, the term "expectation of life" is familiar to laymen, and hence we will use it here. For general discussion of the American Experience Table of Mortality, see MacLean, *Life Insurance* (5th ed., 1939), 83–88; Elston, *Sources and Characteristics of the Principal Mortality Tables* (2d ed., 1932), 60–62.

"It is well recognized by actuaries that neither the American Experience Table nor the Combined Experience Table fairly represents the current mortality either of the American population as a whole or of that portion of the population that buys annuities or life insurance. Both are based on obsolete statistical data, and both grossly understate the

Section 602 (e) of the Act (*infra*, p. 72)), plus 3% interest per annum.[4] In the case of respondent herein, who was 54 years of age at the death of the insured, the monthly installments amounted to $29.50, at the rate of $5.90 for each $1,000 of insurance. Respondent, however, claimed that Regulation 3450 was void and unauthorized. She contended that under Section 602 (h) (2) the full face amount of the policy plus 3% interest per annum was to be paid in 120 equal monthly installments, *i. e.* $9.616 per month for each $1,000 of insurance ($48.08 for the $5,000 policy of which respondent was the beneficiary), and that she was

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life expectancy of young people. Their use today in life insurance is predicated on the fact that these tables, although not representative of current mortality, provide a conservative measure of an insurance company's liability under life-insurance policies." 2 Bonbright, *Valuation of Property* (1937), p. 741. Since the compilation of the American Experience Table the expectancy of life has lengthened materially; accordingly, premiums set on the basis of that table are conservative, but that is in some measure offset by the fact that benefits are also payable on that basis and hence err on the side of liberality. For this reason, the actual liabilities which the court below imposed on the National Service Life Insurance system, as shown in the letter from the Veterans' Administration, Appendix A, are heavier than they would be if the American Experience Table were an accurate reflection of current mortalities. However, for simplicity and because of the statutory mandate, our argument is couched in terms of that table.

[4] In calculating the monthly payments, the two primary factors for consideration are the beneficiary's life expectancy and the fact that payments are guaranteed for ten years. The mathematics determining the monthly payments under Regulation 3450 is described in Appendix D, *infra*, p. 91.

entitled to such monthly payments for her remaining lifetime.

The District Court rejected respondent's contention and held that she was entitled to monthly payments, according to the Regulation, in the amount of $29.50 per month since May 12, 1943, for 120 months certain, which payments were to continue for the remainder of her natural life (R. 5). It also ordered the United States to pay respondent the unpaid installments which had already accrued (R. 5–6).

On appeal, the court below reversed the judgment of the District Court and remanded the cause for further proceedings, on the ground that Regulation 3450 did not comply with Section 602 (h) (2) of the National Service Life Insurance Act of 1940. It held that that Section required the amount of the monthly installments, to be paid to beneficiaries 30 or more years of age at the time of the death of the insured, to be computed by dividing the face amount of the policy (plus 3% interest per annum) by 120, without regard to the beneficiary's expectation of life at the insured's death (R. 9), and this despite the fact that the payments were to continue for the remainder of the beneficiary's life; that since the total of the 120 *guaranteed* payments, as computed by the Veterans' Administration, was not equal to the face amount of the policy plus interest, the insured's beneficiary did not receive what the insured had contracted for (R. 8–9); that Congress,

in its amendment of September 30, 1944, did not approve the construction of Section 602 (h) (2) contained in Regulation 3450 (R. 9–10); and that although these payments might in extreme cases require the Government to pay five times the face amount of the policy, Congress, in its generosity to the beneficiaries of veterans, might have intended such a result (R. 9–11). Judge Kerner dissented (R. 11).

While this case was pending in the District Court for the first time, the Act of September 30, 1944, c. 454, 58 Stat. 762, 763, authorized the granting of an option to all beneficiaries, except those to whom payments of insurance installments had already been commenced, to elect to receive a refund life income in place of payments under the original provisions of Section 602 (h) (2);[5] and

[5] Under the refund life income option, the first beneficiary's life expectancy is taken into account and a series of guaranteed monthly instalment payments is established in an amount and for a sufficient period so that the sum of these guaranteed installments, although equal to substantially less than the present value of the policy, equals its face amount. This difference between the face amount of the policy and the present value of the guaranteed payments is the result of the fact that only the face amount, and not interest, is guaranteed. The value of *all* installments, both guaranteed and contingent, discounted at 3%, is, however, equal to the present value of the policy. See *infra*, pp. 58–59. If the first beneficiary lives beyond the guaranteed period, the installments continue for the remaining lifetime of that beneficiary, but second or contingent beneficiaries receive payments only for the guaranteed period. The amount of each installment is, in most cases, lower than it would be under Regulation 3450, since the guaranteed period is longer. See *supra*, p. 5.

the Administrator did grant such an option. After the case had been returned to the District Court for its second hearing, the Insurance Act of 1946 (Act of August 1, 1946, c. 728, 60 Stat. 781) extended this option to cases in which insurance benefit payments had been commenced prior to September 30, 1944. Under this option, respondent would be entitled to receive monthly installments of $27.40 (at the rate of $5.48 for each $1,000 of insurance) for a guaranteed period of 183 months, and thereafter for her remaining lifetime. Respondent has not elected to receive payments under this plan, nor has she received any payments under the original statutory method of settlement, either as calculated by the Veterans' Administration or by herself.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that Regulation 3450 set up a formula different from the one prescribed by Section 602 (h) (2) of the National Service Life Insurance Act of 1940.

2. In holding that Section 602 (h) (2) plainly and unambiguously required that the face value of the insurance plus 3% interest per annum was to be paid in equal monthly installments over a period of 120 months certain.

3. In holding that under Regulation 3450 the beneficiary who died before the expiration of 120 months did not receive what the insured had bargained for.

4. In holding that "nothing is said in the statute about equalizing" the face value of the policy plus interest over the life expectancy of the beneficiary.

5. In failing to hold that Congress by the 1944 amendment to the Act approved Regulation 3450.

6. In reversing the judgment of the district court.

SUMMARY OF ARGUMENT

A. The bare text of Section 602 (h) (2), read without extrinsic aid, supports the construction, embodied in Regulation 3450, that the beneficiary's life expectancy must be taken into account in the calculation of benefit payments. Paragraph (2) of the Section parallels paragraph (1) in first designating the class of beneficiaries it covers, and then describing the period of time over which "such insurance" is to be payable in equal monthly installments. On this view, the words "one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary" represent the period of time over which the face amount of the insurance is to be paid, "in equal monthly installments," in the case of beneficiaries of thirty or more. This reading best harmonizes the parallel wording of paragraphs (1) and (2) and best relates paragraph (2) to the opening language of Section 602 (h).

Moreover, since the Act is comprehensive insurance legislation, employing recognized insurance

terms throughout, Section 602 (h) (2) should be construed in its technical sense as incorporating the beneficiary's life expectancy as an element in the computation of the amount of the monthly installments. This type of insurance settlement has long been used by commercial life insurance companies; their uniform construction and practice is in accord with Regulation 3450, since the inclusion of the beneficiary's life expectancy in computing monthly installments is required by fundamental actuarial principles. If the proceeds of matured insurance contracts are to be paid in monthly installments for life to beneficiaries of different ages, and hence with different life expectancies, the amount of the monthly installments must vary inversely. A commercial company will, by the averaging process basic to calculating life expectancies, pay no more than the total of the face amounts of its policies plus interest. To ignore life expectancy in settlements providing a life-annuity-with-guaranteed-minimum-period would result in paying at least full face amount plus interest in each case, and since beneficiaries will usually live beyond the minimum guaranteed period, more than the face amount plus interest in most cases. In these circumstances, a commercial insurance company would ultimately have to default on its obligations.

There is neither injustice nor irregularity involved in computing monthly installments on the

basis of the beneficiary's life expectancy since the present value of the monthly installments established by Regulation 3450, viewed prospectively at the time of the insured's death, is equal to the face amount of the policy, regardless of when the beneficiary himself thereafter dies. On the other hand, the ruling below increases the present value of insurance payable to beneficiaries 30 or more years old to between one-and-one-half and two-and-one-half times the face amount, and thus leads to unaccountable discrimination against beneficiaries under 30, the present value of whose benefits remains equal to the face amount. And, even if premiums could be increased to discharge the increased liability, which increase would probably be impossible of accurate calculation so long as the insured is given the right to change his beneficiary, the consequence would be to burden insureds, whose beneficiaries are under 30, with the increased installments payable to beneficiaries over 30.

B. Provisions of the original Act, other than Section 602 (h) (2), make it clear that consideration of the beneficiary's life expectancy is required in calculating the schedule of monthly installments payable under that Section. As so calculated, the monthly installments due to beneficiaries 30 years or more fulfill the statutory requirements that all insurance calculations be based on the American Experience Table of Mortality (Section 602 (e)); that the premium rates

be the well-known "net rates" (Section 602 (e)), which are adequate to discharge all liabilities under the Regulation but not under the decision below; that the actual value of the policy at the time of the death of the insured, under the American Experience Table, not exceed $10,000 (Sections 602 (q), 603); that reserves adequate to meet all liabilities be set aside under accepted actuarial principles (Section 605 (b)), and that the actual value of the policy on maturity be not influenced by the accident of whether the beneficiary was more or less than 30.

The decision below is not only inconsistent with these statutory provisions but its sole rationalization, i. e., that Congress intended to assume the extra costs, conflicts with further sections marking out the express limits of Congressional generosity, which include no assumption, or provision for the payment, of the great additional liabilities under Section 602 (h) (2) as construed below. Moreover, the lower court ignores the facts that no such generosity was shown to World War I veterans and that Congress clearly intended to be no more liberal to the servicemen covered by the National Service Life Insurance Act of 1940. Finally, it imposes enormous liabilities on the United States without the clear language necessary to warrant a court in holding that Congress intended to assume them.

C. Construed in light of the practice under the pre-existing United States Government Life

Insurance system (available to World War I veterans), Regulation 3450 is valid. A similar option (life annuity with 240, instead of 120, guaranteed monthly installments) was by regulation provided under that system, and the monthly installment payable under that option was based on the life expectancy of the beneficiary. It is far more reasonable to construe 602 (h) (2) as continuing, with some modification, this settlement practice under the earlier act than to read it as a drastic and unheralded departure from all known governmental or private insurance practice.

D. The construction of Section 602 (h). (2) embodied in Regulation 3450 was adopted shortly after the Act became law. It was early communicated to the various service departments and military installations for transmission to eligible servicemen, and its substance was incorporated in various of the forms used in selling National Service Life Insurance. Moreover, the Veterans' Administration has consistently, since 1940, followed this construction and on its basis has settled, without any other complaint, matured claims totalling more than two billions of dollars. In these circumstances this administrative interpretation is entitled to great weight, particularly where, as here, the Regulation incorporates a contemporaneous construction by the agency which participated in the drafting of the Act and was charged with its administration. Since

there is, at the very least, a plainly reasonable basis for this construction, it was error to upset this hitherto unchallenged regulation.

E. The legislative history, as well as the terms, of the 1944 and 1946 amendments to the benefit-payment provisions of the Act, also support the Regulation's validity.

1. The Veterans' Administration's letter accompanying the 1944 proposal reproduces the schedule of installments under the Regulation, points up the fact that the total guaranteed installments are less than face amount of the policy and that hardship might arise in cases of premature death, and recommends the addition of a refund life income option, the total guaranteed payments of which equal the face amount. Congress was thus told in plainest terms of the construction placed by the Veterans' Administration on Section 602 (h) (2). Moreover, the addition of the refund life income option indicates affirmative approval of that construction, for the additional option was made available for the express purpose of mitigating hardship which resulted in some cases under 602 (h) (2), as originally enacted. But such hardships would result only under the construction placed thereon by the Veterans' Administration. Under the construction below, the full face amount of the policy *plus* interest is guaranteed in each instance. This guaranteed amount is substantially greater than the amount guaranteed under the option

added in 1944, *i. e.*, the full amount of the policy *without* interest. Hence if the construction below were intended originally, there would have been no necessity to make the additional option available.

2. Under the 1946 amendment, it was expressly stated, this time by the House Committee on World War Veterans' Legislation, that the aggregate amount guaranteed under 602 (h) (2), as originally enacted, was less than the face amount of the policy. Thus, again, the construction embodied in Regulation 3450 was recognized, and again to mitigate some hardship, the right to elect a refund life income was continued. Approval of Regulation 3450 is further manifest from the Congressional addition of a new Section 602 (t) providing, as one of four optional methods of settlement for all policies thereafter maturing, an option identical with that of Section 602 (h) (2), (option (3)), which option, however, was not made available to firms, corporations, etc., "because payments in such cases could not be based upon the life of an individual." Option (3) can be fitted into the Act's structure only if the Veterans' Administration's construction be adopted. For instance, Congress, as part of option (2), included the right to receive the insurance benefits in 120 guaranteed payments and no more. Under the construction below, the same monthly payments would be made both under that option and under option (3), although, in the latter case only, for some unaccountable

reason, the monthly installments would continue after the termination of the guaranteed period for the beneficiary's remaining lifetime. If such differential results were intended, it was unnecessary to add the other options, since option (3) would be selected in the vast majority of cases, because of its disproportionate value compared to the premiums paid and to the other options.

ARGUMENT

VETERANS' ADMINISTRATION REGULATION 3450 IS VALID AND CONSISTENT WITH SECTION 602 (H) (2) OF THE NATIONAL SERVICE LIFE INSURANCE ACT OF 1940

The court below, in a decision of unprecedented importance in the field of veterans' insurance, has held that Regulation 3450 of the Veterans' Administration contravenes Section 602 (h) (2) of the National Service Life Insurance Act of 1940, and has in effect construed that Section as "plainly and unambiguously" imposing actual liabilities totally disproportionate to the premiums paid and beyond the ability of the National Service Life Insurance Fund ultimately to discharge. This holding ignores the plain meaning of the statutory method of settlement as understood in the field of commercial life insurance; violates fundamental actuarial principles; is inconsistent with other sections of the National Service Life Insurance Act of 1940; and disregards the consistent administrative construction

by the Veterans' Administration of Section 602 (h) (2), which Congress in considering subsequent amendments to the Act indicated was in accord with its intention. By its violation of fundamental and universally accepted actuarial principles, and its misreading of the statute, the decision below increases the potential liabilities to be satisfied out of the National Service Life Insurance Fund by tens of billions of dollars in excess of the premiums paid in and to be paid.* We submit that in so holding the Circuit Court of Appeals committed clear error.

A. REGULATION 3450, UNLIKE THE DECISION OF THE COURT BELOW, IS INCONSISTENT WITH THE TERMS OF SECTION 602 (h), THE STATUTORY METHOD OF SETTLEMENT AS UNDERSTOOD IN THE INSURANCE FIELD, AND WITH RECOGNIZED FUNDAMENTAL ACTUARIAL PRINCIPLES

1. Regulation 3450 was intended to embody the method of settlement established in Section 602 (h) (2) and its validity hinges upon the construction given to that Section. The statute provides:

> *Such insurance* shall be payable in the following manner:
>
> (1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly instalments.
>
> (2) If the beneficiary to whom payment is first made is thirty or more years of age

* See letter of the Administrator of the Veterans' Administration of October 24, 1947, Appendix A, *infra*, pp. 66–69.

> at the time of maturity, in equal monthly instalments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary. [Italics supplied.]

As a matter of bare text, paragraph (2) certainly permits of the construction that the "insurance" (presumably the face amount of the policy—here $5,000—upon which premium payments were based) was to be payable in equal monthly installments for the beneficiary's entire lifetime, with a guarantee of payments for 120 months certain. This is the construction embodied in Regulation 3450. That regulation provides that, in cases in which the beneficiary is 30 or more, "the amount of the monthly installment for each $1,000 of insurance shall be determined by the age of the beneficiary as of last birthday at the time of the death of the insured," in accordance with a schedule, "based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum," which shows that a beneficiary aged 54 at the insured's death, respondent's age, is entitled to receive monthly installments of $5.90 for each $1,000 of insurance.[7]

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[7] Section 608 of the National Service Life Insurance Act of 1940, 54 Stat. 1012, 38 U. S. C. 808, gives the Administrator of the Veterans' Administration "power to make such rules and regulations, not inconsistent with the provisions of this part [i. e. the National Service Life Insurance Act], as are necessary or appropriate to carry out its purposes * * *."

No actual National Service Life Insurance *policy* was is-

The Circuit Court of Appeals and respondent insist, however, that another construction of paragraph (2) is demanded by the statute's wording. Under their construction, the full face amount of the "insurance," together with interest, is payable in equal monthly installments for 120 months, *i. e.*, ten years; after the $5,000 of "insurance" has been so paid, additional monthly installments of like amount are to be paid to the beneficiary for his remaining lifetime.

But, far from being "plain and unambiguous," the latter construction, in addition to leading to unreasonable and illogical results at war with the entire structure and purpose of the Act, as we shall show, constitutes, in and of itself, a forced construction of the text of Section 602 (h) (2). In the first place, Section 602 (h) provides at the outset that "Such insurance shall be payable" in a designated manner. The term "such insurance" patently refers to the *insurance* for which

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sued. The National Service Life Insurance Certificate, which was issued in each case in lieu of the policy, as authorized in Section 602 (a), 38 U. S. C. 802 (o) (Appendix B, *infra*, p. 76), provided:

"Subject to the payment of the premiums required, this insurance is granted under the authority of the National Service Life Insurance Act of 1940, and subject in all respects to the provisions of such Act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of this Act, shall constitute the contract."

Cf. *Lynch* v. *United States*, 292 U. S. 571, 577; *White* v. *United States*, 270 U. S. 175, 180.

the insured contracted, and not to gratuitous benefits in excess of the amount of insurance contracted for. Moreover, the terms of paragraphs (1) and (2)—both of which are preceded by, and dependent grammatically upon, the single clause, "Such insurance shall be payable"— are parallel in structure, indicating clearly that the benefits available under each plan are to be the same; each paragraph contains, first, a designation of the class of beneficiaries to which it applies, and, secondly, a description of the period for which the benefit installments flowing from the "insurance" are to be paid. In other words, the language of paragraph (1) preceding the comma (*i. e.*, "If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity") parallels the initial words of paragraph (2) (*i. e.*, "If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity"). The remaining language of Section 602 (h) (1) (*i. e.*, "Such insurance shall be payable * * * in two hundred and forty equal monthly installments"), likewise parallels the language of paragraph (2) following the first comma (*i. e.*, "Such insurance shall be payable * * * in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary"), and each of these provisions defines the period of payment of the "insurance" to the class of beneficiaries to which it applies. This is made even

clearer by the difference in wording of the latter portions of the two paragraphs; paragraph (1) makes the insurance payable flatly "in two hundred and forty equal monthly installments," while paragraph (2) makes it payable "in equal monthly installments for * * *," and then follows the period of payment; *i. e.*, "one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary."[8] If there were no second comma in paragraph (2), or if it followed the word "installments," this parallelism of the two paragraphs would be entirely clear, but the placing of the punctuation mark does not conceal the function of the portions of both paragraphs which follow the first comma as designating the period of time over which the "insurance" was to be paid in equal monthly installments.

If the lower court's construction of paragraph (2), differentiating so sharply in treatment of beneficiaries under 30 from the older ones, were intended by Congress, it is probable that this parallelism would have been displaced by a different structure, in which the "in two hundred and forty equal monthly installments" of para-

[8] Note also the use of the terms "for one hundred and twenty months *certain*." This language carries a well-known meaning in the insurance field (*infra*, pp. 25–26), but even in ordinary usage it would connote, in the context of paragraph (2), that the insurance was to be payable in equal monthly installments throughout the beneficiary's lifetime, but that 120 payments were guaranteed in any event.

graph (1) would be matched by "in one hundred and twenty equal monthly installments," in paragraph (2), and the additional contingent benefit to the older beneficiaries expressed in a separate sentence. On the wording of Section 602 (h), as Congress wrote it, the construction of paragraph (2) embodied in Regulation 3450 is textually the preferable one, simply as a matter of grammatical structure and of the language employed.

2. Even if the langage of Section 602 (h) (2) might not clearly connote to a layman that the beneficiary's life expectancy must be considered in computing the amount of the monthly installments, it would be universally interpreted as having that meaning in commercial life insurance. The National Service Life Insurance Act is comprehensive insurance legislation, employing recognized insurance terms throughout,[9] and it is in that technical sense that these statutory provisions must be understood and interpreted,

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[9] For example, in Section 602 (h) (2) itself, we find "one hundred and twenty months certain" and "at the time of maturity", terms which have a definite technical meaning in the insurance field. Other examples are as follows: Section 602 (a), 38 U. S. C. 802 (a) refers to the "five-year level premium term plan;" Section 602 (e), 38 U. S. C. 802 (e) to premium rates" and "cash, loan, paid up, and extended values;" Section 602 (f), 38 U. S. C. 802 (f) to the "privilege of conversion," "payment of the difference in reserve," "policies of insurance upon the following plans: Ordinary life, twenty payment life, thirty payment life," "dividends from gains and savings," "refunds of unearned premiums;" Section 605 (b), 38 U. S. C. 805 (b), to "such reserve amounts as may be required under accepted actuarial principles;" Section 607 (a), 38 U. S. C. 807 (a), to "excess mortality cost."

unless Congress has clearly indicated another purpose. *Massachusetts Protective Ass'n* v. *United States*, 114 F. (2d), 304, 311 (C. C. A. 1); *Portland Terminal Co.* v. *Boston and Maine Railroad*, 127 Me. 428, 436; *State* v. *Murlin*, 137 Mo. 297, 305–306; *State ex rel. Cantwell Printing Co.* v. *Hull*, 170 Wis. 174, 177–178; 2 Sutherland, *Statutory Construction*, 3rd ed. (1943), sec. 4919, p. 437. In this field, the practice of commercial insurance companies and established actuarial principles are essential sources of meaning. It is important to recognize, at the outset, that this was not a statute addressed to laymen, couched in common every-day terms which all could understand. This was a technical statute, dealing with a technical subject and employing technical concepts and expressions unfamiliar and therefore of uncertain meaning to the average man but wholly clear and precise to the technician in whose language it was written.[10]

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[10] See Frankfurter, *Some Reflections on the Reading of Statutes*", the Benjamin N. Cardozo Lecture before the Association of the Bar of the City of New York, March 18, 1947, published in 47 Col. L. Rev. 527, 536:

"We must, no doubt, accord the words the sense in which Congress used them. That is only another way of stating the central problem of decoding the symbols. It will help to determine for whom they were meant. Statutes are not archaeological documents to be studied in a library. They are written to guide the actions of men. As Mr. Justice Holmes remarked upon some Indian legislation, 'The word was addressed to the Indian mind.' [*Fleming* v. *McCurtain*, 215 U. S. 56, 60.] If a statute is written for ordinary folk,

a. Commercial life insurance companies, in computing the amount of the monthly installment under this general type of settlement of matured insurance contracts (*i. e.*, life annuity to beneficiary with guaranteed minimum number of payments), a settlement which is commonly offered and well understood, have uniformly considered the beneficiary's life expectancy, without question either by the courts or state insurance commissioners."[11] This method of settlement had long been in commercial use in 1940, the year in which the National Service Life Insurance Act became law. See, *e. g.*, Huebner, *Life Insurance* (3d ed. 1935), pp. 174–5; and *The Handy Guide to Standard and Special Contracts* (1940)—setting forth specimen commercial policies containing terms and tables used in calculating benefit payments to beneficiaries of various ages, pp. 294–296 (Equitable Life Assur. Society), 613, 614 (Metropolitan Life Ins. Co.), 766, 768 (New York Life Ins. Co.), 816 (Northwestern Mutual Life Ins. Co.), 1005 (Prudential Ins. Co. of America). Use of this method has continued down to the present time. *The Handy Guide to Standard and Special Contracts* (1947), pp. 270–271, 273 (Equitable), 567, 568 (Metropolitan), 672, 673 (New York), 705,

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it would be simply arbitrary not to assume that Congress intended its words to be read with the minds of ordinary men. If they are addressed to specialists, they must be read by judges with the minds of the specialists."

[11] See *infra*, pp. 30–31, fn. 16.

707 (Northwestern), 843 (Prudential)." Under this type of settlement, commercial companies do not pay out the full face amount plus interest of the policy within the guaranteed period and thereafter continue regular installments for the rest of the beneficiary's life, as respondent would require the Veterans' Administration to do under the similar terms of Section 602 (h) (2). Rather, the commercial practice is in accord with the procedure under Regulation 3450. See tables cited in *The Handy Guide* and Huebner, *supra*.

b. The inclusion of the beneficiary's life expectancy in the computation of the monthly installments is required by fundamental actuarial principles. A commercial insurance company, in obligating itself to pay, on the death of the insured, the face amount of the matured policy (with

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[12] The language of Section 602 (h) (2) is substantially the same as that of the similar options of the commercial insurance companies:

E. g., Equitable's option reads: "LIFE INCOME OPTION—Made payable in equal * * * monthly instalments for ten or twenty years certain, with payment continuing during the remaining lifetime of the person upon whose life the income depends * * *."

Metropolitan's option reads: "(LIFE INCOME—10 YEARS CERTAIN).—By the payment of equal monthly payments * * * to the * * * beneficiary, * * * for a fixed period of 10 years and for so long thereafter as the payee shall survive, * * *."

New York's option reads: "LIFE INCOME WITH PAYMENTS GUARANTEED FOR A FIXED PERIOD:—The proceeds * * * may be made payable in equal * * * monthly instalments for a fixed period of ten or twenty years, * * * and for the remaining lifetime of the payee, * * *."

interest) in monthly installments, *must* consider the life expectancy of the beneficiary. The life expectancy of a young person is naturally greater than that of an older person; so that, if the proceeds of the insurance are to suffice to provide life income payments to beneficiaries at various ages, the amount of each installment must be greater for a person with a short life expectancy than for one with a longer life expectancy. Although it is unpredictable how long a particular individual will live, the life expectancy of a large group of persons of the same age is calculable. The amount of the monthly installment is based upon the life expectancy of this group, and the company, by an averaging process, is assured that it will not be called upon to pay more than the total of the face amounts of its policies plus interest, since the losses sustained when one beneficiary lives beyond his life expectancy will be offset by the gains made when another dies prematurely.

If the beneficiary's age and life expectancy are ignored, as the court below held was required by Section 602 (h) (2), and only the guaranteed minimum period is considered in computing the monthly installments, then payments equaling the full face amount of the policy, plus interest, will be the minimum paid in each instance, as a matter of course. In most cases, however, the guaranteed period (ten years) is below the beneficiary's life expectancy, and the beneficiaries will live beyond

that minimum period.[13] Hence, more than the face amount of the policy, plus interest, will necessarily have to be paid in most cases. But in this situation there is no gain to draw on to offset the additional liabilities, since at least the face amount of the policy plus 3% interest would always be paid out. A commercial insurance company, faced with such a construction of this type of settlement, would ultimately be forced to draw upon reserves held for other liabilities or default in its payments. A theoretical, although not practical,[14] alternative might be to raise its premiums to such high levels that it would always be protected no matter what the beneficiary's life span; but in that case the cost of insurance for many insureds (*e. g.*, those with older potential beneficiaries) would be disproportionately high to the benefits to be received upon their death; they would in effect be paying for benefits which they could not obtain and which accrued to other insureds who had chosen beneficiaries with longer life expectancies. See *infra*, pp. 32–35.

Contrary to the court below, there is neither injustice nor irregularity involved in computing

[13] Under the American Experience Table, a person has to be 68 years old before his life expectancy is less than ten years.

[14] This alternative is hardly practical so long as the insured retains the right to change his beneficiary, and is free at any time to designate a child with the maximum life expectancy. Beneficiaries often die before insureds, and the right to change beneficiaries would therefore always have to be retained, at least in some measure.

the monthly installments according to the beneficiary's age, even though some beneficiaries, who "die before their time," ultimately receive less than the full face amount of the policy plus interest. The situation must be viewed prospectively at the time of the insured's death. On that date, the insurance contract matures, and the beneficiary is entitled to the face value of the policy, $10,000 or, as in this case, $5,000. Under the type of settlement represented by Section 602 (h) (2), as construed in Regulation 3450, the payment is in effect made by the automatic purchase for the beneficiary of a life annuity with 120 payments guaranteed; and at that time, the present value to the beneficiary of this annuity, computed in accordance with the American Experience Table and 3% interest, equals the face amount of the policy. See *infra,* p. 32 and Appendix D, *infra,* p. 93. In these circumstances, at the time of the insured's death the beneficiary becomes entitled to benefits representing the face amount of the contract purchased for him by the insured. Regardless of when the beneficiary dies, be it the next day, 10, 20, or 50 years thereafter, the complete obligation under the annuity is discharged so long as the first beneficiary receives monthly installments throughout his lifetime, and if the next in line receives the balance in the event that the first beneficiary dies prior to receiving the full number of guaranteed installments. Less or more than the

policy's face amount plus interest may ultimately be paid out, depending upon the actual length of the first beneficiary's life,[15] but looking forward from the time of maturity the real value of the policy accords with its face amount.[16] A prin-

[15] If the beneficiary outlived his life expectancy in any substantial degree, the payments under the policy would considerably exceed the face amount plus interest. That the beneficiary may ultimately receive less—or more—than the policy's face amount is, of course, not unique in the insurance field. Commercial insurance companies, as we have said (*supra*, pp. 25–26), offer life-annuity-with-guaranteed-payment settlements which are interpreted in the same way as Regulation 3450. And commercial insurance companies regularly sell straight life annuity contracts in which less than the amount paid by the insured on the contract plus interest is returned if the annuitant dies prematurely. By contrast, a beneficiary is entitled to the full face amount of the policy even though his insured dies after payment of only one premium. An example, in another field, of the valuation of interests at the time of the death of the person providing the benefit—*i. e.*, at the beginning of the beneficiary's period of enjoyment—is the valuation, for tax purposes, of life interests and remainders as of the date of the death of the testator, even though the life tenant may actually die very prematurely. *Ithaca Trust Co.* v. *United States*, 279 U. S. 151, 155; *Matter of White*, 208 N. Y. 64.

The method of settlement represented by Regulation 3450 was deemed so useful and equitable that early in 1944 it was added, by regulation of the Veterans' Administration, as a fourth optional settlement under United States Government Life Insurance—established in 1919 for World War I veterans—in addition to the three options which had been available for several years. 9 Fed. Reg. 732, January 19, 1944. See *infra*, p. 46.

[16] Commercial life-insurance policies providing settlements similar to that of Regulation 3450 have never been held to conflict with the statutory provisions in some sixteen states,

ciple of actuarial equivalence—*i. e.*, equivalence between the present value of the monthly installments under the policy and the policy's face amount—is basic to all insurance calculations, and is rigidly observed in commercial insurance practice. This requirement of equivalence is observed not only in installment settlements but in premium and other insurance calculations.

3. The ruling below flatly violates these fundamental principles and leads to unaccountable discrimination and extraordinary results. First, in violation of the principle of actuarial equivalence stated above, the Circuit Court of Appeals' view gives the beneficiary far more than the $10,000 or the $5,000 his insured had contracted for, since if the monthly installments are calculated on the basis of the 120 guaranteed payments, without regard to the beneficiary's life expectancy, then the actual value of the policy at the death of the insured is considerably in excess of the policy's face amount. Calculated on the basis of the American Experience Table of Mortality, rather than on the Veterans' Administration's

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the District of Columbia, and Hawaii, prohibiting "any provision for a mode of settlement at maturity of less value than the amount insured on the face of the policy, plus dividend additions, if any, less the indebtedness to the company on the policy, and less any premiums that may by the terms of the policy be deducted." Penn. Stats. Ann. (Purdon's ed.), Title 40, Sec. 511 (d) (from Pa. Laws, 1921, p. 724); for similar provisions, see, *e. g.*, Okla. Stats. Ann., Title 36, Sec. 219 (from Okla. Laws, 1909, p. 346); Mich. Stats. Ann., Title 24, Sec. 24.263 (4) (from Mich. Pub. Acts, 1943, p. 103).

own experience,[17] the comparative present values of the monthly installments under Regulation 3450 and under the respondent's contention are as follows:[18]

Beneficiary's age	Present value under Regulation 3450	Present value under respondent's view	Beneficiary's age	Present value under Regulation 3450	Present value under respondent's view
10	$1,000	[1] $2,796	50	$1,000	$1,796
20	1,000	2,633	54	1,000	1,629
30	1,000	2,421	60	1,000	1,411
40	1,000	2,136	70	1,000	1,129

[1] Under the 1946 amendment (*infra*, pp. 87–88), all beneficiaries, regardless of age, are eligible for the life-annuity-with-120-guaranteed-payments settlement formerly restricted by Section 602 (h) (2) to beneficiaries of 30 or more. See *infra*, pp. 60–64.

The striking disparity between the benefits available under the original act to beneficiaries under 30 and those accruing, under the lower court's construction, to older beneficiaries is also indicative of the error in the ruling under review. Section 602 (h) (1), dealing with the method of settlement to beneficiaries under 30 years of age at the time of the insured's death, provides

[17] Calculation of present values on the lower court's view which are based on the *actual* mortality of National Service Life Insurance beneficiaries (see the figures set out in Appendix A, *infra*, p. 67) enlarges the difference between present values according to Regulation 3450, and those under the Circuit Court of Appeals' interpretation of Section 602 (h) (2), since the present values under the Regulation are calculated under the American Experience Table, which understates present-day expectancies (*supra*, pp. 5–6, fn. 3). This difference in basis of calculation still leaves, however, a large gap between the two sets of values, as the figures in the text and those in Appendix D indicate. Moreover, the calculations based on actual mortality figures more nearly reflect the true potential liability resulting from the decision below.

[18] The construction of this table is explained in Appendix D, *infra*, pp. 91–93.

for 240 payments and no more. There is no room for any construction of that provision so that these younger beneficiaries would receive more than the face of the policy plus interest. As above, accepted actuarial principles can be applied to determine the present value of both settlements. Under Regulation 3450, their value would be substantially the same for both classes of beneficiaries. Under the construction below, while the actual value of a policy to a beneficiary 29 years old still equals the face amount, the actual value of the policy to a beneficiary 30 years old would be almost 2½ times the face amount.

If, moreover, as Congress has indicated in the Act, the National Service Life Insurance Fund was to be self-supporting in all respects, except for the items specifically enumerated (see *infra*, pp. 40–45) the Veterans' Administration in establishing premium rates should have allowed for these additional payments to beneficiaries of 30 or more years of age. The premiums as now set are adequate to meet liabilities equal to the face amount of the policy but not these large additional burdens. But apart from the fact that the Veterans' Administration clearly could not under the Act establish premium rates at a different level (see, *infra*, pp. 36–37),[19] it would be impossible to

[19] Congress did not intend the premium rates to be substantially higher than the rates established. In reporting the original measure to the Senate, Senator Harrison stated flatly that "premium rates based on the average age—25 years—will be 67 cents per thousand per month." 86 Cong. Rec. 12926. See also *infra*, pp. 36–37.

establish rates at reasonable levels which would accurately reflect such increased liabilities, so long as the insured is allowed to change his beneficiary at will. The only rates which could be set would be those which would protect the Fund against all contingencies, which rates would be at prohibitive levels. Moreover, any increase in premiums would result in the insured whose beneficiary was under 30 making contributions to offset the additional payments to beneficiaries 30 or over. Hence, even if the rates could be increased to levels necessary to protect the Fund, they would be disproportionately high compared to the benefits in many cases, and grossly discriminatory against insureds with beneficiaries under 30. See *supra*, p. 28; *infra*, pp. 36–37.

To illustrate the discrimination against beneficiaries under 30 years of age, and the other inequities of the respondent's construction of the Act, let us take the case of three servicemen, each carrying $10,000, all in the same age group, and accordingly paying the same premiums. One names his 10-year-old son as beneficiary; the second names his 30-year-old sister; and the third his 70-year-old mother. If each should die shortly thereafter, the son would, under respondent's construction, receive an income of $55.10 a month for 20 years; the sister would receive $96.10 a month for 10 years, and for as long thereafter as she might live; and the mother would receive the same monthly payments as the sister, even though the

mother has a life expectancy of 8.48 years, while that of the sister is 35.33 years, according to the American Experience Table. As of the date of the insured's death, the present value of the mother's total income would be $11,294.79 (under the American Experience Table and calculated on the basis of 3% interest), while that of the sister would be $24,206.55; the boy's, with no mortality element involved, would, of course, be $10,000. It is difficult to attribute to Congress the inequity of allowing the beneficiaries of three insureds of equal age, paying identical premiums, benefits of such vastly different value. Regulation 3450, consistent with recognized acturial principles and accepted practice, avoids such irrational discrimination.

B. OTHER PROVISIONS OF THE ACT INDICATE THAT THE BENEFICIARY'S LIFE EXPECTANCY SHOULD BE CONSIDERED IN CALCULATING PAYMENTS UNDER SECTION 602 (h) (2)

Provisions of the original Act, other than Section 602 (h) (2), make it clear that the Veterans' Administration was required, in calculating the schedule of monthly installments payable under Section 602 (h) (2), to consider the beneficiary's life expectancy.

1. Section 602 (e) (Appendix B, *infra*, p. 72) provides that in addition to all premiums, "all cash, loan, paid up, and extended values, *and all other calculations in connection with such insurance,* shall be based upon said American Experience Table of Mortality * * *." [Italics sup-

plied.] The all-inclusive nature of this language plainly encompasses the calculations of monthly installments due to beneficiaries over 30 years of age, and required the Veterans Administration to base these schedules upon the American Experience Table.

2. Section 602 (e) also requires that "the premium rates for such insurance shall be the *net rates* based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum." [Italics added.] [20] We have pointed out above (a) that Senator Harrison, in charge of the bill, informed the Senate that premium rates for a 25-year-old serviceman would be 67 cents per thousand, and (b) that this rate is adequate to cover payments under Regulation 3450 but wholly inadequate under the construction we attack (see *supra*, pp. 31–34). Moreover, the rates set—those mentioned by Senator Harrison—were the only rates which could under this Section be established, since the term "net rates" has a definitive actuarial meaning as rates which, without loading for expenses of administration, for additional benefits of any kind, or for extra reserves against unexpected

[20] These words are virtually identical with those of Section 403 of the Act of October 6, 1917, c. 105, 40 Stat. 398, 410 (establishing yearly renewable war risk insurance) and of Section 301 of Title III of the World War Veterans' Act, 1924, c. 320, 43 Stat. 607, 624 (concerning converted United States Government Life Insurance), except for the change of the interest rate from 3½% to 3%. See *infra*, p. 37, fn. 22.

liabilities, should be established as premiums for pure life insurance of a particular face amount; and the specific "net rates" for any particular method of premium payment, monthly or yearly, at various rates of interest, may be found in standard tables which are commonly used in the field of insurance.[21] For this reason, it is clear that the reference in Section 602 (e) to the "net rates based upon the American Experience Table of Mortality," plus 3% interest, adopts the well defined standard net rates to which Senator Harrison referred in his example.[22]

3. The maximum insurance issuable under the Act (Section 602 (q), Appendix B, *infra*, p. 77), or in combination with United States Government

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[21] See annual "net rate" premium tables contained in (a) The Principles and Practice of Life Insurance, 8th ed. (1912), p. 142, published by the Spectator Company (original prepared by Nathan Willey, Actuary; new explanatory text by Henry Moir), and (b) The Principles and Practice of Life Insurance, 9th ed. (1939), p. 92, published by Chilton Co. (9th edition revised and edited by Edward B. Fackler).

[22] Under the premium rate schedule for 5-year convertible term United States Government Life Insurance, a serviceman 25 years of age would pay a monthly premium of $.67 per thousand. Federal Laws Relating to Veterans of Wars of the United States, Sen. Doc. No. 131, 72d Cong., 1st sess. (1932), p. 260; Veterans' Administration Form 740, "Premium Rates and Policy Values." The same schedule, with a few, single penny, changes due to the lowering of interest rate from 3½% to 3%, has been used for premium rates on the 5-year level premium term National Service Life Insurance. Veterans' Administration Insurance Form 398, "Information and Premium Rates, National Service Life Insurance," August 1941, p. 19.

Life Insurance (Section 603) (Appendix B, *infra*, p. 77) is expressly limited to $10,000.[22a] The Veterans' Administration has so limited the face value of all insurance policies issued by it under the Act, but, as we have shown, *supra*, pp. 31–32, the Circuit Court of Appeals' construction increases the actual value of many policies, at the time of the insured's death, far in excess of the statutory limit. Regulation 3450, on the other hand, follows the Congressional requirement by establishing the present value of all $10,000 policies on maturity at $10,000, under the American Experience Table. See *supra*, p. 32, and Appendix D, *infra*, at p. 93).

4. Section 605 (b) of the Act (Appendix B, *infra*, pp. 77–78) authorizes the Administration to set aside out of the National Service Life Insurance Fund "such reserve amounts as may be required under accepted actuarial principles, to meet all liabilities under such insurance." Under the ruling below, reserves computed according to accepted actuarial principles to cover the face amounts of the policies would be inadequate to meet all liabilities, since, as we have pointed out above (*supra*, pp. 27–28), the actual payments made to beneficiaries would in a large number of cases exceed the face amount of the policy. Moreover,

[22a] This $10,000 limitation continues the limit which was set in the Act of October 6, 1917, c. 105, 40 Stat. 398, 409, sec. 400, establishing yearly renewable war-risk insurance for World War I servicemen.

there could be no definitely calculated reserves set aside during the insured's lifetime, since the full value of the policy benefits, being wholly dependent on and fluctuating with the age of the beneficiary at the time of the insured's death, would perforce remain uncertain. Congress could certainly not have intended to require reserve amounts to be set aside "under accepted actuarial principles" if the value of the policy benefits were to be so uncertain.

5. We have already discussed Section 602 (h) (1), providing the method of settlement to beneficiaries under 30 years of age (*supra*, pp. 32–35), and shown the gross disparity in the benefits available to, and the treatment of, the two classes of beneficiaries, on respondent's theory. There is no inkling anywhere in the history of the original Act, or its amendments, that Congress desired to require, or even permit, such a wholesale discrimination. See *infra*, pp. 49–50, 55–64.

6. The additional costs resulting from the construction below would not only absorb the portion of the National Service Life Insurance Fund allocated to the payment of dividends to insureds as contemplated by Section 602 (f) of the Act, 38 U. S. C. 802 (f) (Appendix B, *infra*, p. 73) (which dividends were actually under consideration at the time of the entry of the judgment below), but would impose a financial burden on the National Service Life Insurance Fund which the Fund could not discharge at the established

premiums. And, as has been shown (*supra*, pp. 33, 36–37), the Veterans' Administration could not have initially set higher premiums, either legally or actuarially; even if it could have done so, the higher premiums necessary to meet the extra cost would serve to thwart express Congressional purpose, make the insurance too expensive for many servicemen, and, under the original Act, bear very unequally on men with younger beneficiaries. Nor could the premiums be raised now that the insurance contracts are already in effect. Cf. *Lynch* v. *United States*, 292 U. S. 571, 577; *White* v. *United States*, 270 U. S. 175, 180. The Circuit Court of Appeals attempted to escape this dilemma by attributing the additional costs to the special generosity of Congress to older beneficiaries and indicating that the Government was to bear the extra burden (R. 10).

a. This holding does not square with the Act's structure and contravenes specific provisions of the 1940 Act in which Congress plainly indicated the limits of its generosity. Section 606 (Appendix B, *infra*, p. 78) provided that the United States would bear the cost of administration, and authorized the expenditure for that purpose of moneys already appropriated to the Veterans' Administration. Under Section 607 (a) (Appendix B, *infra*, p. 78) the United States also bears the "excess mortality cost and the cost of waiver of premiums on account of total disability traceable to the extra hazard of military or naval

service;" [23] Sections 607 (b) and (c) (Appendix B, *infra*, pp. 78–79) authorize the transfer of funds therefor from the periodic National Service Life Insurance appropriation to the National Service Life Insurance Fund, "a permanent trust fund" established by Section 605 (a) (Appendix B, *infra*, p. 77) out of the premiums paid on account of the insurance, and earnings thereon. Section 609 (a) provides against the recovery of benefit payments erroneously made where it would be inequitable to require repayment, and 609 (b) directs the reimbursement of the National Service Life Insurance Fund for such waived recoveries. Congress obviously intended the Fund, built up by premium payments, to bear the entire cost of benefit payments, except for these three major items of administrative expense, payments attributable to extra military hazards, and of waived recovery of erroneous payments. These are the only costs which the State-

[23] "Excess mortality cost * * * traceable to the extra hazard of military or naval service" refers to the "death of the insured as the result of disease or injury traceable to the extra hazard of military or naval service."

Section 602 (n), 38 U. S. C. 802 (n) authorizes the Administrator to waive payment of premiums on National Service Life Insurance during periods of "continuous total disability of the insured", and specifically provides (*infra*, p. 76) that "premium rates shall be calculated without charge for the cost of the waiver of premiums herein provided." Section 607 requires the United States, rather than the National Service Life Insurance Fund, to bear the cost of this waiver where the disability is "traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator."

ment of the Managers on the Part of the House of Representatives in connection with the Conference Report on the bill (H. Rep. 3002, 76th Cong., 3d sess., p. 62)—the only committee report on the measure (see *infra*, p. 49)—mentions as being assumed by the United States. And in the subsequent appropriation acts these were the sole specific liabilities for which appropriations were made. See *e. g.*, Independent Offices Appropriation Act, 1945, Act of June 27, 1944, c. 286, 58 Stat. 361, 383; Independent Offices Appropriation Act, 1946, Act of May 3, 1945, c. 105, 59 Stat. 106, 129; Independent Offices Appropriation Act, 1947, Act of March 28, 1946, c. 113, 60 Stat. 60, 77. There is no similar assumption, or provision for payment of the cost, of the additional liabilities which the Fund would have to bear under Section 602 (h) (2) as construed below.[24]

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[24] Subsequent amendments to the 1940 Act added certain other costs to be borne by the United States, *e. g.*, insurance granted to servicemen previously denied coverage because of the condition of their health; insurance granted to certain aviators and some servicemen disabled in line of duty. 38 U. S. C., Supp. V, 802 *et seq.* Section 9 of the Insurance Act of 1946, c. 728, 60 Stat. 781, providing for disability *payments* to an insured during a period of disability, directs that the United States bear this liability when it arises from or is traceable to the extra hazard of military or naval service. The Insurance Act of 1946, in Section 11, also authorizes the Administrator to calculate the Government's liability for annuities payable on death resulting from the extra hazard of military or naval service on the basis of more realistic mortality tables than the American Experience Table, even though the monthly benefit installments themselves continue

b. It is inconceivable that Congress intended, in 1940, to impose this great financial burden on the Government in favor of new servicemen (volunteers, and men who at that time were drafted for only one year of military training under the new Selective Training and Service Act of 1940, 54 Stat. 885, 50 U. S. C. App. 301). The Congressional purpose in enacting the National Service Life Insurance Act of 1940 was quite clearly to grant these servicemen benefits which, while liberal, were no greater than had been made available to veterans of World War I; and no such generosity had been shown to the latter.[25] At the time of the passage of the National Service Life Insurance Act of 1940, it was specifically pointed out that,

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to be figured according to the American Experience Table; this means, roughly, that the United States, rather than the Insurance Fund, bears not only the excess mortality cost computed on that table but also carries these annuity payments during that additional period of life expectancy which the more modern mortality tables show over that of the American Experience Table. See *supra*, pp. 5–6, fn. 3. Public Law No. 46, 80th Cong., 1st sess., the First Deficiency Appropriation Act, 1947 (Act of May 1, 1947, c. 49), appropriates $300,000,000 for this purpose. Cf. Hearings before the Subcommittee of the Committee on Appropriations, H. of Reps. 80th Cong., 1st sess., on the First Deficiency Appropriation Bill for 1947, pp. 642–646.

[25] The Veterans' Administration had under the United States Government Life Insurance system provided a life annuity with 240 guaranteed payments as an optional settlement. The monthly installment paid under this option is computed in accordance with the same actuarial principles as used in calculating the monthly installments in Regulation 3450. See *infra*, pp. 46–48.

in the important respect of disability insurance, the new system merely provided waiver of premium without payment of benefits.[26] The new Act likewise did not allow lump sum payments on maturity; it did not provide optional methods of settlement, and it restricted the class of allowable beneficiaries to close relatives.[27] It would be strange if the Congress which thus deliberately refused to go any further than in the old legislation in these and other respects should, without the slightest indication of purpose, embody in the new Act a far greater benefit than was available under the earlier insurance statutes.

c. Furthermore, liability for this vast added burden would of course fall directly upon the United States, and in an astronomical amount which can

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[26] In the very short discussion of the measure on the floor of the Senate, Senator Harrison, in charge of the bill, took occasion to point out that "this new insurance permits waiver of premiums upon total disability, but benefits are not payable for such disability as was the case under war-risk insurance." 86 Cong. Rec. 12920.

[27] The debates on the 1944 and 1946 liberalizing amendments referred to below (pp. 56–64) referred to the original 1940 Act as being less generous than that enacted for the benefit of World War I veterans. 90 Cong. Rec. 8138 (Congressman Rankin), 92 Cong. Rec. 6169 (Congressman Rankin), 6171 (Congresswoman Rogers), 6172 (Congressman Stigler), 6174 (Congressman Scrivner). The 1946 Act (Insurance Act of 1946, c. 728, 60 Stat. 781), among other things, granted for the first time the privilege of lump-sum payments, permitted provision for benefit payments to the insured during disability periods on payment of an extra premium, and removed the restriction on the class of permitted beneficiaries. See *ihfra*, pp. 47–48, 61–62.

only be estimated at the roughest.[28] As Mr. Justice Holmes said, "A liability in any case is not to be imposed upon a government without clear words," and where "the liability would amount to great sums, only the plainest language could warrant a court in taking it to be imposed," *Pine Hill Coal Company* v. *United States*, 259 U. S. 191, 196. In that case, the statutory construction which was adopted involved a duplication of provisions, in violation of the usual canon, but the Court thought that "unnecessary reduplication is far more easy to admit than an enormous charge upon the United States that can be fastened upon it only by inserting into a statute words that are not there." These words are even more applicable to the contention urged upon the Court by respondent, acceptance of which would, in our view, compel the flat disregard of the National Service Life Insurance Act's terms, its structure, and the legislative purpose.

7. These provisions of the Act support, we believe, the propriety of the Veterans' Administration's action in calculating the monthly installments due to beneficiaries 30 years old or over, in accordance with the American Experience Table of Mortality, in order (a) that the actual value of a policy at the time of the death of the

[28] The total potential additional liability has been estimated by General Bradley at approximately eighty-three billion dollars. See Appendix A.

insured calculated on the basis of the American Experience Table be no more than the maximum insurance face amount of $10,000; (b) that the premium rates be the "net rates" required by the law; (c) that an adequate reserve could be put aside under accepted actuarial principles; (d) that the actual value of the policy, on maturity, not be influenced by the accident of whether the beneficiary was less or more than 30; and (e) that the National Service Life Insurance system be self-sustaining, except for the matters Congress expressly required to be borne by the United States.

C. PRACTICE UNDER THE UNITED STATES GOVERNMENT LIFE INSURANCE SYSTEM SUPPORTS THE PROVISIONS OF REGULATION 3450

Although the 1940 Act did not follow the prior government-insurance statutes in all their provisions (*supra*, p. 43), Section 602 (h) (2) does conform to one of the three optional methods of settlement available under the earlier legislation, and should be construed in its light.[29] Option 3

[29] World War Veterans Act, 1924, Title III (Insurance) 43 Stat. 607, 624, as amended, 38 U. S. C. 512 *et seq.*, provides for payment of United States Government Life Insurance in 240 equal monthly installments, but authorizes the Veterans' Administration (formerly the Veterans' Bureau) to provide optional settlements; under this authorization, the Administration provided three options; "Option 1—Insurance payable in one sum" (lump sum); "Option 2—Insurance payable in elected installments" (guaranteed number of installments, running from 36 to 240, at election of insured or, in some cases, beneficiary); "Option 3—Insurance payable in installments throughout life" (discussed in the text), 38

under the United States Government Life Insurance policy, entitled "Insurance payable in installments throughout life," provides that monthly installments in amounts designated in an appended table (the amounts being graduated with the "age of beneficiary at time of death of the insured") "will be payable throughout the lifetime of the designated beneficiary, but if such designated beneficiary dies before 240 such installments have been paid, the remaining unpaid monthly installments will be payable in accordance with the beneficiary provision of the policy." 38 C. F. R. 10.3068 (1939). In our view, this optional provision under United States Government life insurance policies represents the settlement which Congress intended to impose, by Section 602 (h) (2), on all beneficiaries thirty or more years old at maturity, except that the payments certain were to be for 120 months instead of 240. In each case, regular payments were to continue throughout the first beneficiary's life, however long that might be, and if the first beneficiary died before the completion of the guaranteed payments (120 in one, 240 in the other), the remaining unpaid guaranteed installments

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C. F. R. 10.3063, 10.3068. In 1944, the Veterans' Administration added, as a fourth option, a method of settlement based on Regulation 3450; *i. e.*, life annunity with 120 guaranteed payments. See *supra*, p. 30.

The yearly renewable war-risk term insurance, provided under the 1917 amendment to the War Risk Insurance Act (Act of October 6, 1947, c. 105, 40 Stat. 398, 409–410, sec. 402), was payable in 240 equal monthly installments.

were to be paid to the next in line."[30] It is far more reasonable to construe Section 602 (h) (2) as continuing, with some modification, a similar settlement practice under the earlier act than to read it, despite the similarity in concept and wording, as a drastic and unheralded departure from all known governmental or private insurance practice.[31]

D. THE VETERANS' ADMINISTRATION'S CONSISTENT INTERPRETATION OF SECTION 602 (h) (2) IS ENTITLED TO GREAT WEIGHT

1. The National Service Life Insurance Act of 1940 formed one part of the Second Revenue

[30] In the court below, respondent made the patently erroneous argument that Section 602 (h) (2) was designed to embody, not Option 3 under United States Government Life Insurance, but Option 2, "Insurance payable in elected installments." Under the latter option, there was an election to receive the insurance proceeds in a stated number of months, ranging in multiples of 12 from 36 to 240 payments, at the optant's choice, without any life annuity; 120 monthly payments could be selected, and in that case the monthly installment would be $9.83. 38 C. F. R. 10.3068. Completely ignoring the vital fact that Section 602 (h) (2) provides for payments throughout the first beneficiary's life, with 120 payments guaranteed, while the old option 2 was limited to a stated number of payments (*i. e.* 120) without more, respondent urged that Section 602 (h) (2) compelled the use of the $9.83 monthly installment, modified so as to include 3% interest in place of 3½%.

[31] The basic method of settlement (*i. e.*, 240 equal monthly payments) as well as options 1 and 2 under United States Life Insurance policies (*supra*, fn. 29) were added to the National Service Life Insurance system, in substance, by the 1946 amendments (Act of August 1, 1946, c. 728, 60 Stat. 781) (*infra*, pp. 61–62, 87–88) which added (a) the lump sum settlement, and (b) settlement in equal monthly installments

Act of 1940, and was the subject of very little discussion in either house of Congress, since it did not appear in the bill as initially passed and was written entirely in the Conference Committee."

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of from 36 to 240 in number, in multiples of 12. Under the latter method the insurance benefits may be paid in 120 equal monthly installments without any life annuity. See *infra*, pp. 63–64. The 1944 amendment (Act of September 30, 1944, c. 454, 58 Stat. 782) (*infra*, pp. 83–84) had already added the "refund life income" method of payment. *Supra*, pp. 8–9; *infra*, pp. 56–59.

[32] The National Service Life Insurance Act's legislative history is as follows: The President's brief message of September 14, 1940 (H. Doc. 951, 76th Cong., 3d Sess.) referred to the recent statute calling out the national guard and to the pending Selective Service legislation, and recommended legislation preserving social security benefits for the new servicemen. On the same day, with the express view of permitting the matter to go to conference, Senator Vandenberg offered a floor amendment to the Second Revenue bill of 1940, which the Senate was then considering, preserving, in very broad terms, servicemen's social security benefits; the amendment was agreed to without much debate. 86 Cong. Rec. 12173. On September 18, 1940, Senator Harrison, in charge of the bill, announced that the Vandenberg amendment was "not quite broad enough to cover the matter," so that the conferees "could call in the representatives of the departments and have adequate legislation written"; he then offered a substitute amendment "which would broaden the provisions of the bill and enable us to look into the whole subject"; this amendment, which was quickly adopted, authorized the President to establish allotments and allowances for servicemen, to preserve their social security benefits, and "to provide a modified system of insurance for persons serving in such land or naval forces." 86 Cong. Rec. 12252–3.

The Conference Committee drafted the entire Insurance Act in the form in which it was adopted (Title VI of the Second Revenue Act of 1940). The Statement of the Managers on the Part of the House, the only report on the meas-

The Veterans' Administration participated actively in the drafting of the measure, at the request of the Conference Committee, and suggested its major provisions. The Administration was charged by the Act (Section 608, 38 U. S. C.

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ure, does little more than summarize the provisions of the Act. H. Rep. 3002, 76th Cong., 3d Sess., pp. 62–63 (see *supra*, pp. 41–42). There was very little debate in either House on the insurance portions of the conference bill, the main subject of discussion being the excess profits tax. 86 Cong. Rec. 12945–12970 (House of Reps.); 86 Cong. Rec. 12916–12925 (Senate). In the Senate, Senator Harrison made the statements quoted above (*supra*, pp. 33, 43–44) and there was little other discussion. The entire pertinent discussion, in the Senate, follows (86 Cong. Rec. 12920):

"Mr. HARRISON. * * *. Part I of amendment No. 35 permits persons in military service to take out national service life insurance up to $10,000. This insurance is similar to war-risk insurance with certain modifications based on experience gained over the past 20 years. This new insurance permits waiver of premiums upon total disability, but benefits are not payable for such disability as was the case under war-risk insurance. The new insurance will be 5-year-term insurance with the right to convert to life, 20-year life, or 30-year life. Premium rates based on the average age—25 years—will be 67 cents per thousand per month. Rights of World War Veterans under existing law with respect to war-risk insurance are not changed.

"Because that fund has been built up by the older men who served in the World War, we did not feel we ought to impair or injure it. It would also cause a great deal of controversy and trouble, so we did not affect that fund at all.

* * * * *

"Mr. VANDENBERG. Is it presumed to be built comparably with and on the basis of war-risk insurance?

"Mr. HARRISON. Yes. There is not much difference between the two. They are along the same line, but separate and distinct insurance policies are issued under these two services."

808) with the responsibility of administering, executing, and enforcing the statute and with getting the Act's machinery in motion. In fulfillment of this responsibility, Regulation 3450 (Appendix C, *infra,* pp. 89–90) was issued on February 25, 1941, shortly after the Act became law on October 8, 1940. 6 Fed. Reg. 1162, 1166, 38 C. F. R. (Supp. 1941) 10.3450. The construction of Section 602 (h) (2) it embodies had been officially adopted immediately after the Act went into effect and communicated to the service departments and military installations at the end of November 1940. See War Department Circular No. 149, 1940, Section VI (issued December 10, 1940) (giving table of payments to beneficiaries 30 or more years of age which is identical with that contained in Regulation 3450 (*infra,* p. 90)). Since that time, the Veterans' Administration has followed the Regulation consistently, and on its basis has settled many thousands of claims, aggregating more than two billion dollars, and has paid several hundreds of thousands of monthly installments. The Regulation has also been adopted in connection with the 1946 amendment continuing this method of payment as one of four options. See *infra,* pp. 61–62; Regulation 3479, 9 Fed. Reg. 13668–13669. Until the present litigation, the Administration received no complaints that its method of settlement was improper or not authorized by the Act.

From the beginning, the terms of this type of

settlement, and the fact that the payments depended upon the beneficiary's age at the insured's death, were made known, so far as the Veterans' Administration was able to do so, to the servicemen eligible for National Service Life Insurance. The basic informational bulletin (Veterans' Administration Insurance Form No. 398—"Information and Premium Rates: National Service Life Insurance"—issued August 1941), which was widely distributed, repeats the pertinent provisions of Regulation 3450 and includes the table of payments to beneficiaries of the various ages (pp. 9–10). Veterans' Administration Insurance Forms 350 (without physical examination), 350a (with physical examination), the "Applications for National Service Life Insurance" which most applicants in the continental United States filled out and signed, stated (after November 1942) under the heading of "Specific Instructions" that "The amount of the monthly installment [to a beneficiary 30 or more years of age] for each $1,000 of insurance shall be determined by the age of the beneficiary at the date of the death of the insured."[33] The "Change of Beneficiary"

[33] A copy of Form 350a is included in the Hearings before a Subcommittee of the Committee on Finance, U. S. Senate, 78th Cong., 1st sess., on S. 877 and S. 903 at pp. 13–16. A copy of Form 350 is contained in the printed Navy Department Bulletin (30 June 1944): Manual of Instructions on Government Life Insurance, based on Bupers (Bureau of Naval Personnel) and Busanda (Bureau of Supplies and Accounts) Joint Circular Letter 44–765, pp. 32–33.

form (Veterans' Administration Insurance Form 336), first adopted in June 1941, which was signed by insureds desiring to change their beneficiaries, contained specific information concerning the "manner of payment of death benefits," and included the table set out in Regulation 3450. The War and Navy Department instructions likewise referred to the terms of the settlement, and, moreover, stressed the use of Veterans' Administration forms, and the obtaining of information from available Veterans' Administration personnel and facilities.[34] The National Service Life Insurance

[34] 1. War Department Circular No. 125, 1940 (issued October, 1940) quoted a letter from the Administrator of Veterans' Affairs, dated October 9, 1940, on the new Act, and gave general instructions. Circular No. 149, 1940 (issued December 10, 1940) set forth the table of payments to beneficiaries of 30 years of age or over. Other circulars in 1941, 1942, 1943, and 1944 dealt with other aspects of National Service Life Insurance, until Army Regulation No. 600–110, issued September 7, 1944, codified the existing directives. Both the circulars and the Army Regulation (a) set out the method of payment to beneficiaries of 30 or more, (b) emphasized the use of Veterans' Administration forms and information in the processing of insurance applications, and (c) stressed the need for full and careful explanations to all soldiers of the terms and provisions of National Service Life Insurance.

2. The Navy Department issued similar instructions, likewise containing the schedule of benefits payable to beneficiaries 30 or more years of age. Joint letter of Bureau of Supplies and Accounts and Bureau of Navigation, issued November 25, 1940, Subject: National Service Life Insurance, Enclosure (A). See also the later publication, Manual of Instructions on Government Life Insurance (Navy Department Bulletin; dated June 30, 1944), based on Bupers and Busanda Joint Circular Letter 44–765.

Certificate, which was issued in lieu of a regular policy and which most insureds requested be sent to their beneficiaries, provided on its face (in ordinary type) that "Subject to the payment of the premiums required, this insurance is granted under the authority of the National Service Life Insurance Act of 1940, and subject in all respects to the provisions of such Act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract."

2. Following the often-applied general principle of deference to administrative construction, this Court has already recognized that the consistent administrative construction given government insurance legislation by the Veterans' Administration "is entitled to great weight, 'and such construction is not to be overturned unless clearly wrong, or unless a different construction is plainly required.' *United States* v. *Jackson,* 280 U. S. 183, 193." *United States* v. *Citizens Loan & Trust Co.,* 316 U. S. 209, 214 (payment of war-risk insurance); *United States* v. *Madigan,* 300 U. S. 500, 505 (revival of war-risk policy). This general rule has, of course, special applicability to the National Service Life Insurance system and to Regulation 3450, for "administrative practice, consistent and generally unchallenged * * *

has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new" (*Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294, 315; *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 549; *Adams* v. *United States*, 319 U. S. 312, 314–315; *Edward's Lessee* v. *Darby*, 12 Wheat. 207, 210), especially where, as here, the agency participated in drafting the measure. *United States* v. *American Trucking Assns., Inc., ibid.* We have already shown (*supra*, pp. 18–48) that there is, at the very least, more than reasonable basis for the Veterans' Administration's construction of Section 602 (h) (2), and that the statutory terms are far from compelling respondent's interpretation. In view of this consistent administrative practice since 1940, and of the Veterans' Administration's special connection with and responsibility for National Service Life Insurance, the court below clearly erred in setting aside its hitherto unchallenged regulation.

E. THE LEGISLATIVE HISTORY AND TERMS OF THE 1944 AND 1946 AMENDMENTS TO THE ACT SUPPORT THE REGULATION'S VALIDITY

The legislative history, as well as the terms, of the 1944 and 1946 amendments to the Act, although subsequent to the maturity of respondent's claim (May 12, 1943) (R. 2), demonstrates, in

our view, that Congress was aware of the construction given to Section 602 (h) (2) by the Veterans' Administration and agreed with that reading.[35]

1. *1944 Amendment:* In June 1944, the Administrator of the Veterans' Administration sent to Congress a proposed bill (S. 2015, 78th Cong., 2d sess.), accompanied by a letter recommending certain amendments to the Act, including authorization for the "election of a refund life income in lieu of the mode of payments now provided."[36] The bill was referred to the Senate Committee on Finance, which adopted the Administrator's letter as its own report and recommended passage of the bill without amendment. S. Rep. 1105, 78th Cong., 2d sess. The bill was passed by both Houses without debate on this provision. 90 Cong. Rec. 7983–4 (Senate), 8137–8 (House). Act of September 30, 1944, 58 Stat. 762, 763, "An Act to liberalize certain provisions of the National Service Life Insurance Act of 1940, as amended."

Section 6 of this Act (Appendix B, *infra*, p. 84) amended Section 602 (h) (2) by authorizing the Administrator to permit the insured or his beneficiary to elect, in lieu of the life annuity with 120 payments certain provided by the original Act for beneficiaries of 30 or more, a "refund life

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[35] The pertinent legislative history of the original 1940 Act is outlined at *supra*, pp. 49–50, fn. 32.

[36] The refund life income method of settlement is described *supra*, p. 8.

income." [37] This option was to be limited, however, to those cases in which payments of insurance installments had not been commenced prior to the date of the amendatory Act (September 30, 1944),[38] nor was the option to be available where the refund life income settlement would result in less than 120 guaranteed installments.

The Administrator's letter, recommending the alternative method of settlement, pointed out that under the original terms of Section 602 (h) (2) the total installments paid did not equal the face amount of the policy where a young beneficiary died within or shortly after ten years, and that hardship might result, especially in the case of the premature death of a young widow with children. S. Rep. 1105, p. 2. The Administrator stated that the proposed amendments would "authorize the payment of the full face value of the insurance in every instance and will also insure an income throughout the lifetime of the first beneficiary under the policy" (*ibid*). A table was included, comparing (a) the amount of each monthly installment and (b) the sum of the guaranteed installments, under the proposed re-

[37] Section 5 of the 1944 statute (Appendix B, *infra*, p. 83) added a similar provision for a refund life income option to Section 602 (h) (1), which concerns beneficiaries under 30 years of age.

[38] The Insurance Act of 1946 (*infra*, pp. 60, 62, 85–87) abolished this restriction and permitted the refund life income option to be available in cases in which insurance payments were commenced prior to Sept. 30, 1944.

fund life income settlement and under Section 602 (h) (2), as it then stood. From this table it clearly appeared that at least until the beneficiary was over 60 at maturity the total of guaranteed installments under the old method of settlement was below the face amount of the policy, while the new method guaranteed payment of the face amount in all cases. (*Id.*, p. 3.)

Congress was thus apprised, in plainest terms, of the construction placed on Section 602 (h) (2) by the Veterans' Administration. The absence of even the slightest indication of disapproval, let alone any attempt to alter the language of the original method of settlement or to "correct" past settlements, supports the inference of Congressional acquiescence in the administrative construction. Cf. *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500.

The addition of the alternative method of settlement, moreover, demonstrates that Congress not only acquiesced in that construction but affirmatively approved it. If the original Section 602 (h) (2) had required, as respondent avers, that the full face amount of the policy plus interest be paid in the first ten years, and the same amount every extra ten years thereafter that the first beneficiary lived (R. 11–12), there would have been no necessity for adopting the alternative refund life income method of settlement. That method, *which guarantees only the face amount of the pol-*

icy and not interest (see *supra*, p. 8),[39] would manifestly be a poor substitute for a guarantee of payment of the face amount *plus interest* in the first ten years after maturity, and thereafter for every decade of the beneficiary's life. Congress would be in the position of amending the Act ostensibly to confer an added benefit but actually providing an election under which the beneficiary would receive far less than was made available by the original statute. The adoption of the alternative method of settlement becomes reasonable only under the Veterans' Administration's construction, since only then could less than the full face amount be paid out in any case, the hard-

[39] Since only the face amount is guaranteed under the refund life income plan, the *present value* of the *guaranteed payments* under this settlement at the death of the insured, is less than the face amount of the policy, as the following table indicates:

Age of beneficiary	Monthly installment	Number of payments guaranteed	Present value of guaranteed payments per $1,000 of insurance at 3 percent interest
10	$3.39	304	$704.78
20	3.46	288	717.86
30	3.76	265	734.68
40	4.26	235	760.34
50	5.04	189	791.99
54	5.46	165	804.45
60	6.34	139	828.65
66	8.07	104	862.84

If the first beneficiary dies at or before the end of the guaranteed payments, only the face amount of the policy, without interest, is paid out.

ships discussed in the Administrator's letter result, and any "liberalization" of the original Act flow from the amendment. The court below ignored the significance of these facts when it put aside the legislative history of the 1944 statute as irrelevant (R. 9–11).

2. *1946 amendment.*—The history of the 1946 amendment (Insurance Act of 1946, Act of August 1, 1946, c. 728, 60 Stat. 781) similarly proves that Congress has approved of Regulation 3450.[40] Section 8 of the bill proposed to amend Section 602 (h) (2) to permit policies on which payments had been made prior to the 1944 act to elect the refund life income plan (*supra*, pp. 8, 56–57), and in that connection it was again recognized, this time by the House Committee on World War Veterans' Legislation, that the aggregate amount of installments actually paid under the original section (life annuity with 120 payments certain) might

[40] The bill was H. R. 6371, 79th Cong., 2d sess. Hearings on the subject were previously held by the House Committee on World War Veterans' Legislation. Hearings before the Committee on World War Veterans' Legislation, H. of Reps., 79th Cong., 2d sess., on H. R. 4965 and H. R. 2379 (Feb. 28, March 1, 13, 14, 1946). The bill was reported favorably to the House (H. Rep. 2002, 79th Cong., 2d sess.) and passed on June 3, 1946. 92 Cong. Rec. 6166–6174. The Senate Committee on Finance reported the bill favorably, with amendments (S. Rep. 1705, 79th Cong., 2d sess.) and it was passed by the Senate without debate. 92 Cong. Rec. 9207–9212. The House concurred in the Senate amendments. 92 Cong. Rec. 9569.

in many instances amount to much less than the policy's face. H. Rep. 2002, p. 5.[41]

The Committee also recommended the addition of a new Section 602 (t), providing *four* optional methods of settlement for all policies *thereafter maturing:* (1) lump sum, (2) in equal monthly installments of from 36 to 240 in number, in multiples of 12, (3) 120 guaranteed payments, with

[41] The report states (p. 5):

"The refund life income mode of payment insures payment of the full face value of the contract less any indebtedness with such payments continuing throughout the lifetime of the first beneficiary to receive payments. Insurance which matured prior to September 30, 1944, could only be paid to a beneficiary under 30 years of age in 240 monthly installments or to a beneficiary 30 or more years of age in 120 installments certain with payments continuing throughout the lifetime of such beneficiary. In case the beneficiary was under 30 years of age the full face value of the insurance with interest was payable provided any person within the permitted class of beneficiaries survived to receive such payments. If the beneficiary was 30 years or more of age and died within 120 months after the insured's death, the remainder of the 120 installments not paid to the beneficiary was payable to the alternate beneficiary or if no alternate beneficiary was designated to the insured's spouse, child, parent, brothers, or sisters, in the order named. In many instances the aggregate amount of insurance actually payable under this mode of settlement amounted to much less than the face of the policy, and in many cases payments will have been completed before minors have reached an age when they will be able to support themselves. For example the veteran having $10,000 insurance names his wife, age 30, as beneficiary. He died January 1, 1942, leaving his widow and a minor child, age 2. The widow dies January 1, 1943, after having received 12 installments of insurance at the rate of $39.70, a total of $476.40. The child will be entitled to 108 installments at the same rate or a total of $4,287.60. The

payments continuing during the first beneficiary's remaining lifetime (without regard to whether the beneficiary was under or over 30 at the insured's death); and (4) refund life income. The Senate Committee on Finance, although it amended H. R. 6371 by complete substitution of its own bill, effected no pertinent changes in the sections with which we are concerned.[42] The Senate version also recommended a new Section 602 (t), containing the same four options as settlements for policies thereafter maturing (S. Rep. 1705, 79th Cong., 2d Sess., p. 6), and the Act carried these proposals into law (Appendix B, *infra*, pp. 84–88).

The language of option (3), it is to be noted, is virtually identical with that contained in the original Section 602 (h) (2), and was obviously designed to continue that mode of settlement. Option 4 (refund life income) was carried over from the 1944 statute. The first and second options were new, and conformed closely to two

total amount of insurance payable under this $10,000 policy is $4,764 and payments will have been completed when the child is 12 years of age. Your committee is of the opinion that the present beneficiary of insurance which matured prior to September 30, 1944, should have the same right of securing payment of insurance under a mode of settlement which will provide payment of the face value of the contract with the certainty of the payments continuing throughout the lifetime of the present beneficiary."

[42] It allowed additional time beyond that fixed in the House bill within which beneficiaries who had received payments prior to September 30, 1944, could elect to change over to the refund life income. H. Rep. 2002, p. 14 (one year); S. Rep. 1705, p. 4 (two years).

of the options which had long been available under United States Government Life Insurance, and for which there had been great demand by World War II veterans. See *supra*, pp. 44, 46–48.

The options provided by the 1946 Act, and the continued inclusion of a life annuity with 120 guaranteed payments as one of the four optional settlements, manifest, we believe, further Congressional recognition and approval of the construction placed on Section 602 (h) (2) by the Veterans' Administration. There is, first, the extension of the refund life income plan to policies on which payments had been made prior to the 1944 act, and the terms in which that proposal was discussed. *Supra*, pp. 60–61; cf. 92 Cong. Rec. 6173–6174 (Congressman Scrivner). Next, it is highly pertinent that both Committees recommended that options (3) and (4) be not available to firms, corporations, legal entity, etc., "because payments in such cases could not be based upon the life of an individual * * *" H. Rep. 2002, p. 7; S. Rep. 1705, p. 6.

Finally and most significantly, the respondent's view leads to unreasonable discriminations in the statute's effect. Thus, the second option includes an election to receive the insurance proceeds in 120 guaranteed payments with no additional installments; on the respondent's construction, the same monthly payments would be made under this option and under option (3) for 120 months, but one who had selected the latter would

unaccountably continue to receive installments for the remainder of his life while the other optant would find his insurance income ended. This is but an illustration of the crucial fact that only the Veterans' Administration's interpretation will fit option (3) into the structure of the Act. For it is clear that the total payments under the three methods of settlement, other than option (3), would not, on the average, exceed the face amount of the policy, plus interest where payment is delayed, and that, under those three plans, the policy's present value at the time of the insured's death would not exceed the face amount. It would be extraordinary to attribute to Congress an intent to permit, via option (3), a method of settlement which, on the construction below, would have an actual value on maturity far in excess of its face amount. *Supra,* p. 32.[11] If this were the case, the other options would become meaningless for all practical purposes, since the third option, because of its disproportionate value compared to the premiums paid and to the other options, would be selected in the vast majority of cases, particularly since an insured,

[11] The Circuit Court of Appeals justified its construction of Section 602 (h) (2) by the assumption that Congress might have intended special benefits to older beneficiaries who would presumably find it harder to earn livelihoods (R. 10), but that method of settlement—life annuity with 120 guaranteed payments—is now available, as option (3), to beneficiaries of all ages.

spurred by this near-certainty of large gain, would designate the youngest beneficiary possible consistent with his circumstances.

3. We believe, as we have argued (*supra*, pp. 18–55), that Section 602 (h) (2) of the 1940 Act plainly supports Regulation 3450. But if there be doubt, the 1944 and 1946 amendments surely swing the balance. These are statutes dealing with precisely the same subject matter, and in them Congress has given "complete demonstration of the legislative sense of its own language" (*Alexander* v. *Mayor and Commonalty of Alexandria*, 5 Cranch 1, 8) in the initial Act. We have shown that the entire structure of the National Service Life Insurance Act, as it now stands, refutes the Circuit Court's construction of the life-annuity-with-120-guaranteed-payments method of settlement and demands the interpretation embodied in Regulation 3450. No other reading makes sense. This being so, the later enactments present powerful proof of the original statute's scope. Cf. *Alexander* v. *Mayor and Commonalty of Alexandria*, 5 Cranch 1, 8; *United States* v. *Freeman*, 3 How. 556, 564–565; *Cope* v. *Cope*, 137 U. S. 682, 688–689; *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 309; *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 277.

CONCLUSION

For the foregoing reasons, we respectfully sub-

mit that the judgment below is erroneous and should be reversed.

PHILIP B. PERLMAN,
Solicitor General.
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Acting Assistant Attorney General.
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JANUARY 1948.

APPENDIX A

LETTER FROM THE VETERANS' ADMINISTRATION

VETERANS' ADMINISTRATION,
Washington 25, D. C., October 24, 1947.

The Honorable PHILIP B. PERLMAN,
The Solicitor General,
The Department of Justice,
Washington 25, D. C.

DEAR MR. SOLICITOR GENERAL: This is in response to your request for information as to the probable effect on National Service Life Insurance if payments thereunder are required to be made in accordance with the decision of the Seventh Circuit Court of Appeals in the case of *Zazove* vs. *The United States.*

If settlement is required to be made in this manner, each beneficiary of National Service Life Insurance who is entitled to receive payment under a life income with instalments guaranteed for 120 months, would receive $96.10 a month on a policy maturing by death for $10,000, irrespective of the age of the beneficiary at the death of the insured. It should be noted that for insurance maturing prior to August 1, 1946, this settlement was not available to beneficiaries under age 30 at the death of the insured, but for insurance maturing since that date it is available to all beneficiaries. Although age would not be a factor in determining the amount of the instalments, it would be a factor in determining the value of the income as of the date of the insured's death, since

that value depends in part upon the length of the time the beneficiary may be expected to live to receive the income, and that length of time decreases with age. It also varies as to whether the beneficiary is a man or a woman, being, on the average, longer for women than for men of the same age. The following table gives estimates of the value of the income for various ages, male, and female, as of the date of the insured's death.

Age of payee at death of insured	Value of $96.10 per month for life, 120 months certain		Age of payee at death of insured	Value of $96.10 per month for life, 120 months certain	
	Male	Female		Male	Female
10	$31,572	$32,319	50	$19,473	$21,109
20	29,358	30,308	54	17,780	19,473
30	26,600	27,758	60	15,257	16,930
40	23,375	24,743	70	11,775	12,973

The values are based on the actual mortality of National Service Life Insurance beneficiaries under the life income optional settlements, with interest assumed at the rate of 3% a year.

On the approximately 2.1 billion dollars of death claims already incurred and now being settled under the life income with instalments guaranteed for 120 months, it is estimated that the additional liability that would result if settlement is required to be made as indicated in the Zazove opinion would amount to approximately 1.8 billion dollars, using the same assumptions as above.

In estimating the potential liability on policies now in force, and yet to mature, certain additional assumptions have to be made. For example, it is not unlikely that most of those now carrying term insurance would convert to a permanent plan, such as Ordinary Life. Also, many of those having

insurance on an endowment plan would probably attempt to convert to a whole life plan since the extraordinary values that would result from the settlement referred to could be realized only when a policy matures as a death claim, and not when it matures as an endowment. It is also necessary to make some assumptions as to the probable age and sex of the beneficiary at the death of the insured. Referring to the values shown above, it is apparent that the value of the income is greatest at the youngest ages and is greater for women than for men of the same age. Thus it might be expected that in order to derive the greatest value, most insureds would name a relatively young woman or a child as beneficiary. Assuming, then, that the insurance now in force, estimated at 35 billions, would all be held to mature at death and that the typical beneficiary would be a woman aged 30, say, at the death of the insured, and that all policies would be settled under the life income option with instalments guaranteed for 120 months, the potential liability might be about 97 billion dollars instead of 35 billion dollars, an increase of 62 billions. It should be pointed out that the increase would not all take place at once. It would be spread over many years as the policies matured one by one as death claims.

Another major consideration is the potential additional liability in respect to reinstatement of lapsed policies. It is impossible, of course, to foretell how much National Service Life Insurance now lapsed would be reinstated. If 10% of all lapsed policies were reinstated, the potential additional liability would be about 19.7 billion dollars, on the basis of the assumptions already

made. If some different percentage were reinstated, the potential additional liability would be in proportion.

Very truly yours,

[S] Omar N. Bradley,
OMAR N. BRADLEY,
General, U. S. Army, Administrator.

APPENDIX B

STATUTES INVOLVED

1. The National Service Life Insurance Act of 1940 (Part I, Title VI of the Second Revenue Act of 1940, Act of October 8, 1940, c. 757, 54 Stat. 974, 1008, 38 U. S. C. 801 *et seq.*) provides as follows:

> TITLE VI—NATIONAL SERVICE LIFE INSURANCE AND PROVISIONS AFFECTING THE RAILROAD RETIREMENT BOARD
>
> PART I—NATIONAL SERVICE LIFE INSURANCE
>
> SEC. 601. When used in this part—
>
> (a) The term "person" means (1) a commissioned officer; (2) a warrant officer; (3) enlisted personnel (including persons selected for training and service under the Selective Training and Service Act of 1940); (4) a member of the Army Nurse Corps (female); and (5) a member of the Navy Nurse Corps (female);
>
> (b) The term "Administrator" means the Administrator of Veterans' Affairs;
>
> (c) The term "active service" means active service in the land or naval forces (including the Coast Guard) of the United States and service in the land or naval forces of the United States under the Selective Training and Service Act of 1940, but the service of any person ordered to active duty in any such force for a period of thirty days or less, shall not be deemed to be active service in such force during such period;

(d) The term "insurance" means National Service Life Insurance;

(e) The term "child" includes an adopted child.

SEC. 602. (a) Every person who is commissioned and hereafter ordered into, or who is hereafter examined, accepted, and enrolled in, the active service and while in such active service shall, upon application in writing (made within one hundred and twenty days after entrance into such active service) and payment of premiums as hereinafter provided and without further medical examination, be granted insurance on the five-year level premium term plan by the United States against the death of such person occurring while such insurance is in force.

(b) Any person who is released from active service within one hundred and twenty days after such enrollment shall be granted such insurance upon application therefor in writing (made within one hundred and twenty days after a subsequent enrollment or entrance into active service and before discharge or resignation therefrom), and upon payment of premiums and evidence satisfactory to the Administrator showing such person to be in good health at the time of such application.

(c) Any person upon reenlistment or reentrance into or reemployment in active service and before discharge or resignation therefrom and any person in the active service upon discharge to accept a commission and before resignation therefrom, shall be granted such insurance upon application therefor in writing (made within one hundred and twenty days following such reenlistment, reentrance, reemployment, or discharge to accept a commission),

and upon payment of premiums and evidence satisfactory to the Administrator showing such person to be in good health at the time of such application.

(d) Any person who has been commissioned, or examined, accepted, and enrolled, in the active service and is in such active service on the date of enactment of this Act shall be granted such insurance upon application therefor in writing (made within one hundred and twenty days after the date of enactment of this Act and before discharge or resignation from such active service), and upon payment of premiums and evidence satisfactory to the Administrator showing such person to be in good health at the time of such application.

(e) The premium rates for such insurance shall be the net rates based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum. All cash, loan, paid up, and extended values, and all other calculations in connection with such insurance, shall be based upon said American Experience Table of Mortality and interest at the rate of 3 per centum per annum.

(f) Such insurance shall be issued upon the five year level premium term plan, with the privilege of conversion as of the date when any premium becomes or has become due, or exchange as of the date of the original policy, upon payment of the difference in reserve, at any time after such policy has been in effect for one year and within the five year term period, to policies of insurance upon the following plans: Ordinary life, twenty payment life, thirty payment life. All five year level premium term policies shall cease and terminate at

the expiration of the five year term period. Provisions for cash, loan, paid up, and extended values, dividends from gains and savings, refund of unearned premiums, and such other provisions as may be found to be reasonable and practicable, may be provided for in the policy of insurance or from time to time by regulations promulgated by the Administrator.

(g) The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent (including person in loco parentis if designated as beneficiary by the insured), brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided.

(h) Such insurance shall be payable in the following manner:

(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments.

(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary.

(3) Any installments certain of insurance remaining unpaid at the death of any beneficiary shall be paid in equal monthly

installments in an amount equal to the monthly installments paid to the first beneficiary, to the person or persons then in being within the classes hereinafter specified and in the order named, unless designated by the insured in a different order—

(A) to the widow or widower of the insured, if living;

(B) if no widow or widower, to the child or children of the insured, if living, in equal shares;

(C) if no widow, widower, or child, to the parent or parents of the insured, if living, in equal shares;

(D) if no widow, widower, child, or parent, to the brothers and sisters of the insured, if living, in equal shares.

(i) If no beneficiary is designated by the insured or if the designated beneficiary does not survive the insured, the beneficiary shall be determined in accordance with the order specified in subsection (h) (3) of this section and the insurance shall be payable in equal monthly installments in accordance with subsection (h) (1) or (2), as the case may be. The right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payments. No person shall have a vested right to any installment or installments of any such insurance and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority, as provided in subsection (h).

(j) No installments of such insurance shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary, and in the event that no person within the permitted class survives to re-

ceive the insurance or any part thereof no payment of the unpaid installments shall be made.

(k) When the amount of an individual monthly payment is less than $5, such amount may, in the discretion of the Administrator, be allowed to accumulate without interest and be disbursed annually.

(l) Any payments of insurance made to a person represented by the insured to be within the permitted class of beneficiaries shall be deemed to have been properly made and to satisfy fully the obligation of the United States under such insurance policy to the extent of such payments.

(m) The Administrator shall, by regulations, prescribe the time and method of payment of the premiums on such insurance, but payments of premiums in advance shall not be required for periods of more than one month each, and may at the election of the insured be deducted from his active-service pay or be otherwise made.

(n) Upon application by the insured and under such regulations as the Administrator may promulgate, payment of premiums on such insurance may be waived during continuous total disability of the insured which commenced subsequent to the effective date of such insurance and which has existed for six consecutive months or more prior to the attainment by the insured of the age of sixty years, effective as of the due date of the monthly premium becoming payable on or after the first day of the seventh consecutive month of such disability: *Provided*, That application for waiver is made while the insurance is currently kept in force by the payment of premiums, and the insured furnishes proof satisfactory to the Administrator showing

that he is and has been continuously totally disabled for six or more months prior to attaining sixty years of age. Any waiver granted by the Administrator under this subsection shall not become effective prior to the date of application therefor; except that, in the discretion of the Administrator, it may be made effective at any time within a period of not more than six months prior to such date but in no event prior to the first day of the seventh month of such continuous disability. Any premiums tendered to cover a period during which such waiver is effective shall be refunded. The Administrator shall provide by regulations for reexaminations of beneficiaries under this subsection and, in the event that it is found that an insured is no longer totally disabled, the waiver of premiums shall cease as of the date of such finding and the policy of insurance may be continued by payment of premiums as provided in said policy. Premium rates shall be calculated without charge for the cost of the waiver of premiums herein provided and no deduction from benefits otherwise payable shall be made on account thereof.

(o) The Administrator shall promptly determine and publish the terms and conditions of such insurance. Pending the promulgation of the terms and conditions of the five year level premium term policy and the printing of such policy, the Administrator may issue a certificate in lieu thereof as evidence that insurance has been granted and the rights and liabilities of the applicant and of the United States shall be those specified by the terms and conditions of the policy when published.

(p) Such insurance may be made effective, as specified in the application, not later than the first day of the calendar

month following the date of application therefor, but the United States shall not be liable thereunder for death occurring prior to such effective date.

(c) Such insurance shall be issued in any multiple of $500 and the amount of such insurance with respect to any one person shall be not less than $1,000 or more than $10,000.

SEC. 603. No person may carry a combined amount of National Service Life Insurance and United States Government life insurance in excess of $10,000 at any one time.

SEC. 604. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this part, to be known as the National Service Life Insurance appropriation, for the payment of liabilities under National Service Life Insurance. Payments from this appropriation shall be made upon and in accordance with awards by the Administrator.

SEC. 605. (a) There is hereby created in the Treasury a permanent trust fund to be known as the National Service Life Insurance Fund. All premiums paid on account of National Service Life Insurance shall be deposited and covered into the Treasury to the credit of such fund, which, together with interest earned thereon, shall be available for the payment of liabilities under such insurance, including payment of dividends and refunds of unearned premiums. Payments from this fund shall be made upon and in accordance with awards by the Administrator.

(b) The Administrator is authorized to set aside out of such fund such reserve amounts as may be required under accepted

actuarial principles, to meet all liabilities under such insurance; and the Secretary of the Treasury is hereby authorized to invest and reinvest such fund, or any part thereof, in interest-bearing obligations of the United States or in obligations guaranteed as to principal and interest by the United States, and to sell such obligations for the purposes of such fund.

SEC. 606. The United States shall bear the cost of administration in connection with this part, including expenses for medical examinations, printing and binding, and for such other expenditures as are necessary in the discretion of the Administrator. The appropriations made for the Veterans' Administration for the fiscal year 1941 for administrative expenses shall be available for the payment of such costs of administration under this part.

SEC. 607. (a) The United States shall bear the excess mortality cost and the cost of waiver of premiums on account of total disability traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator.

(b) Whenever benefits under such insurance become payable because of the death of the insured as the result of disease or injury traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator, the liability for payment of such benefits shall be borne by the United States in an amount which, when added to the reserve of the policy at the time of death of the insured, will equal the then value of such benefits under such policy. The Administrator is authorized and directed to transfer from time to time from the National Service Life Insurance appropriation to

the National Service Life Insurance Fund such sums as may be necessary to carry out the provisions of this section.

(c) Whenever the premiums under such insurance are waived as provided in section 602 (n) because of the total disability of the insured as the result of disease or injury traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator, the premiums so waived shall be paid by the United States and the Administrator is authorized and directed to transfer from time to time an amount equal to the amount of such premiums from the National Service Life Insurance appropriation to the National Service Life Insurance Fund.

SEC. 608. The Administrator, subject to the general direction of the President, shall administer, execute and enforce the provisions of this part, shall have power to make such rules and regulations, not inconsistent with the provisions of this part, as are necessary or appropriate to carry out its purposes, and shall decide all questions arising hereunder. All officers and employees of the Veterans' Administration shall perform such duties in connection with the administration of this part as may be assigned to them by the Administrator. All official acts performed by such officers or employees designated therefor by the Administrator shall have the same force and effect as though performed by the Administrator in person. Except in the event of suit as provided in section 617 thereof, all decisions rendered by the Administrator under the provisions of this part, or regulations issued pursuant thereto, shall be final and conclusive on all

questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by motion or otherwise any such decision.

SEC. 609. (a) There shall be no recovery of payments made under this part from any person who, in the judgment of the Administrator, is without fault on his part and where, in the judgment of the said Administrator, such recovery would defeat the purpose of benefits otherwise authorized herein or would be against equity and good conscience. No disbursing officer or certifying officer shall be held liable for any amount paid to any person where the recovery of such amount is waived under this section.

(b) Where, under the provisions of this section, the recovery of a payment made from the National Service Life Insurance Fund is waived, the National Service Life Insurance Fund shall be reimbursed for the amount of such payment from the current appropriation for National Service Life Insurance.

SEC. 610. No State law providing for presumption of death shall be applicable to claims for National Service Life Insurance. If evidence satisfactory to the Administrator is produced establishing the fact of the continued and unexplained absence of any individual from his home and family for a period of seven years, during which period no evidence of his existence has been received, the death of such individual as of the date of the expiration of such period may, for the purposes of this part, be considered as sufficiently proved.

SEC. 611. No United States Government life insurance shall be granted hereafter

to any person under the provisions of section 300 of the World War Veterans' Act, 1924, as amended: *Provided,* That this section shall not be construed to prohibit the issue of United States Government life insurance policies in cases in which acceptable applications accompanied by proper and valid remittances or authorizations for the payment of premiums have, prior to the date of enactment of this Act, been received by the Veterans' Administration or which have, prior to said date, been placed in the mails properly directed to said Veterans' Administration, or been delivered to an authorized representative of the War Department, the Navy Department, or the Coast Guard, and which are forwarded to the Veterans' Administration not later than one hundred and twenty days subsequent to said date.

SEC. 612. Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the land or naval forces of the United States or refuses to wear the uniform of such force, shall forfeit all rights to insurance under this part. No insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States; but the cash surrender value, if any, of such insurance on the date of such death shall be paid to the designated beneficiary, if living, or otherwise to the beneficiary or beneficiaries within the permitted class in accordance with the order specified in section 602 (h) (3).

SEC. 613. Whoever in any claim for insurance issued under the provisions of

this part makes any sworn statement of a material fact knowing it to be false, shall be guilty of perjury and shall, upon conviction thereof, be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or by both such fine and imprisonment.

SEC. 614. Whoever, with intent to defraud the United States or any beneficiary of such insurance, shall obtain or receive any money or check for National Service Life Insurance without being entitled to the same, shall, upon conviction thereof, be punished by a fine of not more than $2,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

SEC. 615. Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or in anywise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any application for insurance or reinstatement thereof, waiver of premiums or claim for benefits under National Service Life Insurance for himself or any other person, shall, upon conviction thereof, be punished by a fine of not more than $1,000, or imprisonment for not more than one year, or by both such fine and imprisonment.

SEC. 616. The provisions of Public Law Numbered 262, Seventy-fourth Congress, approved August 12, 1935 (49 Stat. 607), and titles II and III of Public Law Numbered 844, Seventy-fourth Congress, approved June 29, 1936 (49 Stat. 2031), insofar as they are applicable, shall apply to the provisions of this part.

SEC. 617. In the event of a disagreement as to claim arising under this part, suit may be brought in the same manner and subject to the same conditions and limitations as are applicable to United States Government (converted) life insurance under the provisions of sections 19 and 500 of the World War Veterans' Act, 1924, as amended: *Provided*, That in any such suit the decision of the Administrator as to waiver or nonwaiver of premiums under section 602 (n) shall be conclusive and binding on the court.

SEC. 618. This part may be cited as the "National Service Life Insurance Act of 1940".

2. The 1944 Amendment (Act of September 30, 1944, c. 454, 58 Stat. 762) to the National Service Life Insurance Act of 1940 provides in pertinent part:

SEC. 5. Section 602 (h) (1) of the National Service Life Insurance Act of 1940 is hereby amended by substituting a colon for the period at the end thereof and adding the following: "*Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further*, That such optional settlement shall not be available in any case

in which payments of insurance installments have been commenced prior to the date of this amendatory Act."

SEC. 6. Section 602 (h) (2) of the National Service Life Insurance Act of 1940 is hereby amended by substituting a colon for the period at the end thereof and adding the following: "*Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect, in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract less any indebtedness with such payments continuing throughout the lifetime of such beneficiary: *Provided further*, That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months, nor in any case in which payments of insurance installments have been commenced prior to the date of this amendatory Act."

3. The 1946 Amendment (Act of August 1, 1946, c. 728, 60 Stat. 781) to the National Service Life Insurance Act of 1940 provides in pertinent parts:

SEC. 5. (a) So much of subsection (h) of section 602 of the National Service Life Insurance Act of 1940, as amended, as precedes paragraph (3) thereof is hereby amended to read as follows:

"(h) Insurance maturing prior to the

date of enactment of the Insurance Act of 1946 shall be payable in the following manner:

"(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments: *Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect in lieu of this mode of payment and prior to the commencement of payments, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further*, That in any case in which insurance benefit payments were commenced prior to September 30, 1944, the beneficiary, whether or not the first beneficiary, shall have the right to elect to receive a refund life income, as provided in such optional settlement, payable in monthly installments adjusted as of the date of the maturity of such policy, credit being allowed for payments previously made on the insurance. The right of election with respect to cases in which benefit payments were commenced prior to September 30, 1944, shall terminate two years after the date of enactment of the Insurance Act of 1946. The Administrator is directed to send, within one year after the date of enactment of the Insurance Act of 1946, to each beneficiary of insurance on which payments were commenced prior to September 30, 1944, a notice explaining the

right of election. Any such notice shall be sent by registered mail addressed to the last known address of the addressee.

"(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary: *Provided,* That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect, in lieu of this mode of payment and prior to the commencement of payments, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further,* That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months: *Provided further,* That in any case in which insurance benefit payments were commenced prior to September 30, 1944, the beneficiary, whether or not the first beneficiary, shall have the right to elect to receive a refund life income, as provided in such optional settlement, payable in monthly installments adjusted as of the date of the maturity of such policy, credit being allowed for payments previously made on the insurance. The right of election with respect to cases in which benefit

payments were commenced prior to September 30, 1944, shall terminate two years after the date of enactment of the Insurance Act of 1946. The Administrator is directed to send, within one year after the date of enactment of the Insurance Act of 1946, to each beneficiary of insurance on which payments were commenced prior to September 30, 1944, a notice explaining the right of election. Any such notice shall be sent by registered mail addressed to the last known address of the addressee."

* * * * *

SEC. 9. Section 602 of the National Service Life Insurance Act of 1940, as amended, is hereby amended by adding at the end thereof the following new subsections:

"(t) Insurance maturing on or subsequent to the date of enactment of the Insurance Act of 1946 shall be payable in accordance with the following optional modes of settlement:

"(1) In one sum.

"(2) In equal monthly installments of from thirty-six to two hundred and forty in number, in multiples of twelve.

"(3) In equal monthly installments for one hundred and twenty months certain with such payments continuing during the remaining lifetime of the first beneficiary.

"(4) As a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of the first beneficiary: *Provided*, That such optional settlement shall not be available in any case in which such

settlement would result in payments of installments over a shorter period than one hundred and twenty months.

Unless the insured elects some other mode of settlement, the insurance shall be payable to the designated beneficiary or beneficiaries in thirty-six equal monthly installments. The first beneficiary may elect to receive payment under any option which provides for payment over a longer period of time than the option elected by the insured, or if no option be designated by the insured, in excess of thirty-six months. If the option selected requires payment to any one beneficiary of monthly installments of less than $10, the amount payable to such beneficiary shall be paid in such maximum number of monthly installments as are a multiple of twelve as will provide a monthly installment of not less than $10. If the present value of the amount payable at the time any person initially becomes entitled to payment thereof is not sufficient to pay at least twelve monthly installments of not less than $10 each, such amount shall be payable in one sum. Options (3) and (4) shall not be available if any firm, corporation, legal entity (including the estate of the insured), or trustee is beneficiary, or in any case in which an endowment contract matures by reason of the completion of the endowment period.

APPENDIX C

Regulation Involved

Regulation 3450 of the Veterans' Administration, 6 Fed. Reg. 1162, 1166, 38 C. F. R. (Supp. 1941) 10.3450 provides:

> *Payment to first beneficiary.*—Upon due proof of the death of the insured while a National Service Life Insurance policy is in force, the monthly installments, without interest, which have accrued since the death of the insured (the first installment being due on the date of death of the insured) and the monthly installments which thereafter become payable in accordance with the provisions of the policy, shall be paid to the beneficiary or beneficiaries entitled in the following manner:
>
> (a) If the beneficiary to whom payment is first made is under thirty years of age at the time of the death of the insured, payment shall be made in 240 equal monthly installments at the rate of $5.51 for each $1,000 of such insurance.
>
> (b) If the beneficiary to whom payment is first made is thirty or more years of age at the time of the death of the insured, payment shall be made in equal monthly installments for 120 months certain, with such payment continuing throughout the remaining lifetime of such beneficiary. The amount of the monthly installment for each $1,000 of insurance shall be determined by the age of the beenficiary as of last birthday at the time of the death of the insured, in accordance with the fol-

lowing schedule based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum:

Age of beneficiary at date of death of insured	Amount of each monthly installment	Age of beneficiary at date of death of insured	Amount of each monthly installment
30	$3.97	58	$6.49
31	4.01	59	6.65
32	4.06	60	6.81
33	4.10	61	6.98
34	4.15	62	7.15
35	4.20	63	7.32
36	4.26	64	7.50
37	4.31	65	7.67
38	4.37	66	7.84
39	4.43	67	8.02
40	4.50	68	8.19
41	4.57	69	8.35
42	4.64	70	8.51
43	4.72	71	8.66
44	4.80	72	8.80
45	4.89	73	8.94
46	4.98	74	9.06
47	5.08	75	9.18
48	5.18	76	9.28
49	5.28	77	9.37
50	5.39	78	9.44
51	5.51	79	9.50
52	5.63	80	9.55
53	5.76	81	9.58
54	5.90	82	9.60
55	6.03	83	9.61
56	6.18	84	9.61
57	6.33	85	9.61

APPENDIX D

CALCULATION OF MONTHLY INSTALLMENTS UNDER SECTION 602 (h) (2) AND COMPARISON OF PRESENT VALUES

1. The monthly installments payable under Section 602 (h) (2), as set out in Regulation 3450, were calculated as follows:

(a) There was first computed the present value, at 3% interest, of a series of 120 installments of $1.00 payable each month for ten years. This figure being for a fixed period and not contingent upon the life expectancy of any person was computed without reference to rates of mortality and was found to be $104.02.

(b) The present value discounted at 3% interest, of a deferred life annuity of monthly installments of $1.00, beginning at the end of the ten years and continuing for the remaining lifetime of the first beneficiary was then calculated. This second figure is dependent on the life expectancy of the first beneficiary and is calculated in accordance with rates of mortality in the American Experience Table of Mortality, the mortality standard prescribed by Section 602 (e) of the Act. The value of this annuity at various ages is set out in paragraph 4 below.

(c) The sum of the figures computed in (a) and (b) above represents the present value of installments of $1.00 payable monthly for 120 months certain and thereafter for the remaining lifetime of the first beneficiary. By dividing this present value

of a $1.00 monthly installment into the face value of the policy, the amount of monthly installments for that value was determined.

2. Under the decision of the Seventh Circuit the amount of the monthly installments may be determined by taking $104.02, the present value discounted at 3% of a monthly installment of $1.00 for 120 months certain, computed as described in 1 (a) and dividing it into the face value of the policy.

3. The use of algebraic symbols may clarify how these calculations were made.

(a) The symbols A, B, and C are defined as follows:

A = Monthly installment paid to beneficiary (in dollars per $1,000 of insurance).

B = The present value, at 3% interest, of the series of 120 monthly installments of $1.00.

C = The present value, at 3% interest, for a beneficiary aged x at insured's death, of a series of monthly installments of $1.00, beginning at the end of 120 months, and continuing for the remainder of the first beneficiary's lifetime.

(b) Using these symbols, the following formula expresses the method of calculating the monthly installment under Regulation 3450:

$$A = \frac{\$1{,}000}{B + C}$$

(c) Using these symbols, the method of computation of the monthly installments

under the decision below is expressed by the following formula:

$$A - \frac{\$1,000}{B}$$

4. The following table gives values for these symbols and formulae at various ages; the values are based on the American Experience Table of Mortality and 3% interest:

Beneficiary's age	Value of B	Value of C	Value of B+C	$1,000 / B	$1,000 / B+C
10	$104.02	$186.20	$290.22	9.61	3.45
20	104.02	169.91	273.93	9.61	3.65
30	104.02	147.73	251.75	9.61	3.97
40	104.02	118.17	222.19	9.61	4.50
50	104.02	81.35	185.37	9.61	5.39
54	104.02	65.60	169.62	9.61	5.89
60	104.02	42.83	146.85	9.61	6.81
70	104.02	13.51	117.53	9.61	8.51

[1] Monthly installment under the decision below.
[2] Monthly installment under Regulation 3450.

5. The following table (also printed *supra*, at p. 32 of the brief) gives the *present value* of the monthly installments payable under Regulation 3450 (Col (5) above) and under the decision below (Col (4) above):

Beneficiary's age	Regulation 3450	Decision below	Beneficiary's age	Regulation 3450	Decision below
10	$1,000	$2,786	50	1,000	1,783
20	1,000	2,632	54	1,000	1,639
30	1,000	2,421	60	1,000	1,411
40	1,000	2,126	70	1,000	1,129

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